

ICM SOLUTIONS LLC PURCHASING TERMS AND CONDITIONS

1. **ACCEPTANCE.** Supplier acknowledges and agrees that these Terms and Conditions are incorporated in, and are a part of, any agreement between the parties, and each purchase order, release, requisition, work order, shipping instruction, specification and other document, whether expressed in written form or by electronic data interchange, relating to the products to be provided by Supplier pursuant to the foregoing (such documents are collectively referred to as this "Contract"), and that ICM Solutions LLC. (hereafter referred to as "ICM") purchase orders are made conditional upon the incorporation of these Terms and Conditions into this Contract.

2. **PRODUCT SUPPLY.** Supplier shall supply the products ("Products") set forth in ICM's purchase order ("Purchase Order") upon receipt of a Purchase Order and according to the terms of this Contract and the applicable Purchase Order. ICM has not contracted for, and Supplier is not obligated to supply, any Products unless and until a Purchase Order is issued. By executing this Contract, Supplier is deemed to accept all Purchase Orders that comply with the terms and conditions contained herein. In the event of any inconsistency or ambiguity between this Contract and any Purchase Order, this Contract shall prevail and control. No terms or conditions submitted by Supplier that are in addition to, different from or inconsistent with this Contract, including those contained in any Supplier quotation, invoice, acceptance or acknowledgement of Purchase Order or other instrument, shall be binding upon ICM unless specifically and expressly agreed in a writing signed by a duly authorized representative of ICM.

Supplier will use commercially reasonable best efforts to ensure an uninterrupted supply of the Products to ICM. If Supplier is unable to supply the Products in accordance with the terms of this Contract, then ICM may cancel outstanding Purchase Orders without liability to Supplier and source the Products from a third party, including from Supplier's competitors. Supplier will be responsible for and will pay ICM all incremental and increased costs associated with sourcing Products from an alternative supplier, including supply chain cost differentials.

ICM does not guarantee any minimum level of purchases, or that it will necessarily acquire any, or all, of its requirements of the Products from Supplier. Nothing herein shall prevent ICM from obtaining from a third party and/or independently providing products that are the same as or similar to the Products provided hereunder. No territorial protection is given to Supplier.

3. **PAYMENT.** As consideration for the Products, ICM shall pay the amount specified in the applicable Purchase Order(s) as provided herein. Supplier represents that the prices and terms for the Products are no less favorable to ICM than Supplier currently offers to any other customer for the same or similar Products. Except as otherwise agreed to in writing, shipment of deliverables will be made DDP (Incoterms 2010) ICM's offices as specified in the applicable Purchase Order. All invoices must reference the applicable Purchase Order number. ICM reserves the right to return all incorrect invoices. ICM shall pay all correct invoices within thirty (30) days of the date acceptable invoices are received.

Supplier shall be solely responsible for and pay any taxes or other assessments required to be paid by Supplier in connection with Supplier's performance under this Contract or any Purchase Order; provided, however, that if Supplier is charged and required to pay any state, provincial or local sales or use taxes in connection with any transaction hereunder, ICM will reimburse Supplier for such tax unless ICM advises Supplier that an exemption applies. Supplier will provide ICM with any necessary supporting documentation to claim a reimbursement for any sales or use tax.

If ICM desires to acquire specified Products for prices that are exclusive of the costs of freight and delivery of the Products to the relevant ICM delivery point (collectively, "Freight Costs"), then ICM shall give written notice to Supplier, and Supplier shall, promptly after receipt of the notice, provide ICM with a written quote of its prices for the relevant Products that are exclusive of Freight Costs. If ICM accepts the quoted prices, then the quoted prices shall be the prices for the relevant Products for all purposes of this Contract, and at ICM's election and upon its written notice to Supplier, ICM will either: (a) contract directly, at its own expense, with a carrier selected by ICM, in its sole discretion, for delivery of the relevant Products from Supplier's manufacturing or distribution location to the relevant ICM delivery point; or (b) require Supplier to contract, at its own expense, with a carrier selected by Supplier, in its sole discretion, for delivery of the relevant Products from Supplier's manufacturing or distribution location to the relevant ICM delivery point. Where ICM elects to require Supplier to contract with the carrier, ICM shall reimburse Supplier for its actual Freight Costs, provided that (i) such Freight Costs shall not be greater than the prevailing market rate for freight and delivery of the relevant Products, and (ii) Supplier shall include with its invoice for the relevant Products copies of the relevant invoices for Freight Costs issued by the carrier that delivered the relevant Products.

4. **WARRANTIES.** Supplier represents, warrants and covenants that (a) it has good title to the Products and the right to transfer title to the Products free and clear of any lien, claim or other encumbrance of any kind; (b) all Products will conform to all relevant specifications that may be provided by ICM, and to any samples, drawings and descriptions furnished by Supplier relating thereto; (c) all Products will be new (unless otherwise specified by ICM) and fit for their intended uses; (d) all Products will be free from defects or faults of any kind in design, materials and workmanship for a period of the earlier of twelve (12) months from the date of first use by ICM or eighteen (18) months from the date the Products are received by ICM at ICM's delivery point; (e) all Products and their use, manufacture, sale, lease, distribution, or other commercialization do not and will not infringe, misappropriate or violate the intellectual property rights of a third party. Supplier will make available to ICM (by assignment or otherwise) all manufacturers' warranties provided with respect to the Products. All of the foregoing warranties of Supplier shall survive any delivery, inspection, acceptance or payment and shall run to ICM and/or its customers and users of the Products.

5. **SUPPLIER RESPONSIBLE FOR TAXES AND RECORDS.** Supplier shall be solely responsible for filing the appropriate federal, state and local tax forms and for paying all taxes or fees due with respect to the Products. Supplier further agrees to provide ICM with reasonable assistance in the event of a government audit. ICM shall have no responsibility to pay or withhold from payments to Supplier, any federal, state or local taxes or fees.

6. **INSURANCE.** Supplier is solely responsible for maintaining such adequate insurance as is required by law or as is common practice in Supplier's trades or businesses, whichever affords greater coverage. Upon request, Supplier shall provide ICM with certificates of insurance or evidence of coverage before commencing performance under this Contract. Supplier shall provide adequate coverage for any ICM property under the care, custody or control of Supplier. The purchase of insurance will not limit or release Supplier from Supplier's obligations or liabilities under the Contract.

7. **INDEMNITY.** Supplier shall indemnify, hold harmless, and defend ICM, its officers, directors, agents and employees, against all claims, liabilities, damages, losses and expenses ("Liabilities"), including attorneys' fees and cost of suit, arising out of or in any way connected with the Products provided under this Contract, including, without limitation, for any personal injury, illness or death to any person or damage to any property or claim or other assertion of Liabilities or potential Liabilities by any person or any other loss or damage of any kind whatsoever, to the extent such Liabilities are caused by, arise out of, or are connected in any way with: (a) any breach by Supplier, its personnel, or its agents, of any of Supplier's obligations, covenants, undertakings, representations or warranties under this Contract or any Purchase Order; (b) any negligence or willful misconduct of Supplier, its personnel, or its agents; or (c) the fact that any Product provided under this Contract infringes a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes. Supplier shall not settle any such suit or claim without ICM's prior written approval.

Supplier's indemnification obligations will not be affected by any insurance. Supplier is required to maintain pursuant to the terms of this Contract. Every exemption, limitation, defense, immunity, indemnity or other benefit contained in this Contract or otherwise to which ICM is entitled will be held by ICM to the benefit of, and will extend to protect, ICM's directors, officers, employees, agents, contractors and subcontractors.

8. **LIEN WAIVERS.** Supplier shall make prompt and timely payment of any debts or liabilities incurred by Supplier in connection with this Contract. Supplier at its sole cost shall obtain the prompt release of any mechanic's or materialmen's lien or any similar lien or claim fixed against ICM or its assets. The final payment owed to Supplier by ICM under the terms of this Contract shall be contingent on full release of any outstanding liens.

9. **CONFIDENTIALITY.**

9.1 ICM may disclose confidential or proprietary information to Supplier under this Contract. "ICM Confidential Information" will include, but not be limited to, any business, financial, product or customer information, along with any information identified by ICM as confidential. Supplier agrees not to disclose ICM Confidential Information to any third party and will use such information only as is necessary to perform its obligations under this Contract. Upon the expiration or termination of this Contract for any reason, Supplier will promptly notify ICM of all ICM Confidential Information in Supplier's possession and will promptly deliver to ICM all such ICM Confidential Information.

9.2 Supplier agrees not to copy, alter, decompile, disassemble, reverse engineer, or otherwise modify (except with ICM's prior written consent) or directly or indirectly disclose any ICM Confidential Information. Without

limiting the scope of the foregoing, Supplier agrees to limit its internal distribution of ICM Confidential Information to its employees who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by Supplier's employees and agents of nondisclosure agreements with provisions substantially similar to those set forth herein. In no event will Supplier use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care, to prevent the unauthorized use or disclosure of ICM Confidential Information. Supplier further agrees not to use the ICM Confidential Information except in the course of performing hereunder and will not use such ICM Confidential Information for its own benefit or for the benefit of anyone other than ICM. The mingling of the ICM Confidential Information with information of Supplier shall not affect the confidential nature or ownership of the same as stated hereunder. Supplier agrees not to design or manufacture any products which incorporate ICM Confidential Information, except at the request of ICM.

10. TERM; TERMINATION.

10.1 ICM may terminate this Contract upon written notice to Supplier if Supplier fails to perform or breaches any of Supplier's obligations under this Contract, files a petition in bankruptcy, becomes insolvent, or dissolves. Additionally, ICM may terminate this Contract for any other reason upon thirty (30) days' written notice to Supplier.

10.2 Supplier may terminate this Contract upon written notice to ICM if ICM fails to make any undisputed payment to Supplier within thirty (30) days after Supplier notifies ICM in writing that payment is past due.

11. **REMEDIES.** Without limiting any other remedy available to ICM pursuant to this Contract, a Purchase Order or otherwise, if in the reasonable opinion of ICM, the Products are not in accordance with the requirements of this Contract (including, without limitation, the relevant specifications) or if Supplier is otherwise in breach of any of its warranties, Supplier will, at the election of ICM, and at Supplier's cost (including any relevant transportation and labor costs): (a) either replace or repair (including, if applicable, reinstall) the Product to ICM's satisfaction; or (b) without limiting the foregoing, pay an amount of damages if claimed by ICM, upon presentation of a reasonable itemization of costs. Such costs may be subject to reasonable audit or review by Supplier with the limited purpose of verification of the particular claim. If a Product must be removed from other pieces of ICM's equipment, ICM may remove such Product and make it available to Supplier in lieu of allowing Supplier to do so, but all costs of removal, whether performed by ICM or Supplier, will be borne by Supplier. If Supplier states or by its actions indicates its inability or unwillingness to comply with a request to replace or repair a Product or re-perform a Service, then ICM will have the right to suspend further delivery of Products without liability to Supplier and source the Products from a third party supplier in which event Supplier will be responsible for and will pay ICM all incremental and increased costs incurred by ICM, including supply chain cost differentials.

12. **SET-OFF.** In addition to any right of setoff or recoupment provided by law, ICM shall have the right at any time to set-off any amount owed by Supplier, or any of its affiliates, to ICM or any of ICM's affiliates against any amounts due and owed to Supplier under this Contract.

13. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL ICM BE LIABLE TO SUPPLIER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS CONTRACT, WHETHER OR NOT ICM WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

14. GENERAL.

14.1 **Severability.** In the event any provision of this Contract shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision.

14.2 **Assignment; Waiver.** Supplier may not assign or transfer this Contract or any of Supplier's rights or obligations under this Contract, without the prior written consent of ICM. This Contract shall inure to the benefit of, and be binding upon, the successors and assigns of ICM without restriction. A waiver of any default hereunder or of any term or condition of this Contract shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition, but shall apply solely to the instance to which such waiver is directed.

14.3 **Nonexclusive Contract.** This is not an exclusive agreement. ICM is free to purchase Products that are the same as or similar to Supplier's. Supplier is free to, and is encouraged to, advertise, offer and provide the Products to others.

14.4 **Notices.** All notices and other communications shall be in a writing addressed to Supplier or to an authorized ICM representative at the addresses set forth above, and shall be considered given when (i) delivered personally, (ii) sent by confirmed telex or facsimile, (iii) sent by commercial overnight courier with written verification receipt, or (iv) three (3) days after having been sent, postage prepaid, by first class or certified mail.

14.5 **Survival Of Obligations.** Any obligations and duties which by their nature extend beyond the expiration or termination of this Contract shall survive the expiration or termination of this Contract.

14.6 **Governing Law; Jurisdiction.** This Contract shall be construed in accordance with the laws of the State of Utah, excluding its conflict of law rules. Any legal action or proceeding by Supplier against ICM arising out of the Contract shall only be brought in the state or federal courts located in Salt Lake City, Utah. Supplier specifically consents and submits to the personal jurisdiction and venue of such courts.

14.7 **Entire Contract; Modification.** This Contract, including any exhibits hereto and any purchase orders issued hereunder, is the complete, final and exclusive statement of the terms of the agreement between the parties and supersedes all other prior and contemporaneous negotiations and agreements, oral or written, between them relating to the subject matter hereof. This Contract may not be varied, modified, altered, or amended except in writing, signed by the parties.

14.8 **Compliance With Laws.** Supplier shall comply fully with all applicable federal, state and local laws in the performance of this Contract including, but not limited to, all applicable tax, export and environmental laws. The parties expressly agree that this Contract shall not be governed by the United Nations Convention on Contracts on the International Sale of Goods.

14.9 **Attorney Fees and Costs.** In the event any action is instituted by ICM to enforce the terms of this Contract or a Purchase Order, or in connection with a breach or threatened breach of this Contract or any Purchase Order, ICM shall be entitled to receive from Supplier all of ICM's reasonable attorney fees and costs incurred therein.

14.10 **Review and Negotiation.** The parties acknowledge that they have each reviewed and participated in settling the terms of this Contract and that this Contract was and shall be deemed for all purposes to have been drafted by both parties. Furthermore, the parties agree that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation or construction of this Contract.

15. **COUNTERPARTS.** This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.