



## **Purchase Order Standard Terms and Conditions**

### **1. APPLICABILITY.**

The purchase order "PO" and all documents referenced or attached therein and herein (collectively, the "Order"), is an offer by FBD Partnership, L.P. "Buyer" to purchase the goods "Goods" and/or services "Services" described in Buyer's Order from the person, partnership, corporation or other entity specified as the "Seller" on the front of this Order, in accordance with and subject to these terms and conditions (the "Terms"). The Order constitutes the sole and entire agreement between the Buyer and Seller relating to the subject matter hereof and supersedes all other agreements and communications between the Buyer and Seller, with respect to the matters referred to herein, unless Buyer and Seller have executed a separate written document which specifically states that the terms of that document prevail. The Order expressly limits Seller's acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order. These Terms apply to any repaired or replacement Goods provided by Seller hereunder.

### **2. ACCEPTANCE.**

The Order is not binding on Buyer until Seller accepts the Order. Seller's written acknowledgment of Buyer's Order, shipment of Goods or commencement of any Services shall constitute acceptance by Seller of these terms.

### **3. PRICE and PAYMENT.**

Payment of the prices specified in this Order shall constitute full consideration for the Goods and/or Services and rights granted hereunder. The prices for Goods and/or Services are as stated on the Order or the Seller's prevailing market prices, whichever is lower. The Order must not be filled at a higher price than last quoted or charged without Buyer's specific authorization. Seller represents and warrants that the price for the Goods or Services is the lowest price charged by Seller to any of its external buyers for similar volumes of similar Goods or Services. If Seller charges any other buyer a lower price, Seller must apply that price to all Goods or Services under this Order. If Seller fails to meet the lower price, Buyer, at its option, may terminate this Order without liability pursuant to Section 13. No increase in the price is effective without the prior written consent of Buyer. Unless otherwise stated in the Order, Buyer shall pay all undisputed invoiced amounts due to Seller within 60 days. Any time period specified in this Order for payment or applying any discounts shall commence on the later of the date that Buyer: (i) receives Seller's correct invoice at Buyer's address for invoices; or (ii) accepts the Goods as conforming to all specifications and requirements of this Order. Buyer shall have the right to set off any amount owed to it by Seller against any amount payable by Buyer to Seller.

### **4. FORECASTS.**

Buyer is not obligated to any minimum purchase or future purchase obligations. Buyer's forecasts, estimates, and any similar projections shared with Seller are non-binding and are not purchase commitments. Buyer is not obligated to purchase or otherwise compensate Seller for any Good and/or Service not expressly covered by an Order issued by Buyer.

### **5. SHIPPING AND DELIVERIES.**

All Goods shall be packaged, crated, and secured for shipment by Seller in accordance with guidelines and instructions furnished by Buyer and in a manner suitable for transportation to the Buyer facility specified in the Order. Seller shall provide Buyer such information, certifications, material safety data sheets, certificates of origin and/or similar documentation regarding any Goods (or the components used by Seller in the manufacture and assembly thereof) as requested by Buyer or required by Applicable Law. If deliveries are made earlier than the delivery date stated on an Order (the "Delivery Date"), Buyer may reject delivery and return the items at Seller's expense, including any storage, packaging, shipping and transportation costs. If delivery of the Goods is delayed beyond the Delivery Date stated in the Order, Buyer shall have the option of: (i) purchasing the Goods elsewhere and charging Seller with any loss resulting therefrom; (ii) approving in writing a revised delivery schedule; and/or (iii) canceling this Order, or any part thereof, without prejudice to its other rights. Unless otherwise stated in the Order, title and risk of loss for Goods purchased will pass to Buyer upon delivery of the Goods to the possession of Buyer.

## **6. WARRANTIES.**

Seller warrants to Buyer that for a period of 12 months from the Delivery Date, all Goods and/or Services will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable requirements of the Order, including specifications, drawings, quantities, and descriptions specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) consist of only new materials (unless the Order specifications indicate otherwise); (f) be free and clear of all liens, security interests or other encumbrances; (g) will be compliant with all applicable laws and regulations applicable to the Goods including REACH, RoHS and Prop. 65 and those related to slavery, child labor, human trafficking and bribery; and (h) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods and/or Services by Buyer. 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 Buyer's discovery of the noncompliance of the Goods and/or Services with the foregoing warranties. Notice of breach shall be deemed sufficient if given by Buyer within one hundred eighty (180) days after discovery by Buyer. Such notice will be given in writing via email and need only inform Seller of the observed failure mode. Seller shall reimburse Buyer for all costs (including labor charges, cost of replacement parts, handling charges, and other expenses) incurred by Buyer as a result of Seller's breach of any warranty.

## **7. INSPECTION.**

Buyer reserves the right to inspect the Goods in accordance with the standards issued by Buyer. Payment to Seller shall not be construed as acceptance by Buyer or agreement by Buyer that the Goods conform to these terms and conditions. Any inspection or testing by Buyer shall not relieve Seller of its obligations under these terms. Buyer may reject any Goods that are defective, damaged or non-conforming or in breach of Seller's warranties at any time before sale of the Goods or equipping machines with the Goods. If any Goods are rejected, Seller shall, at Buyer's request and at no additional cost (including cost of transportation) to Buyer, promptly deliver replacement Goods conforming to the specifications and delivery instructions.

## **8. CANCELLATION AND CHANGES.**

Changes to any Order must be approved in writing by Buyer. Buyer reserves the right at any time to make changes to specification, drawing, methods of shipment or packing, place of delivery, quantities, and time of delivery. If any such change causes a change in price of or the time required for performance of this Order, an equitable adjustment shall be made in price or delivery schedule, or both. Any claim by Seller for an adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of the change. Price increases or extensions of time for delivery shall not be binding on Buyer unless evidenced by written authorization from Buyer. In the event of cancellation, Buyer will pay Seller for any Goods that are not otherwise capable of resale that were produced by Seller pursuant to the Order prior to Buyer's cancellation. Buyer's rights and remedies are cumulative, and no cancellation shall affect any accrued rights or obligations of either party as of the effective date of such termination. Upon receipt of notice of any termination, Seller shall, unless the notice directs otherwise, immediately discontinue all work.

## **9. INTELLECTUAL PROPERTY.**

Not excluding the warranties expressed herein, Seller represents and warrants the Goods will not infringe any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right. If all or any portion of the Goods are held to constitute an infringement of a patent and/or their use is enjoined for any reason, Seller shall promptly, and at its own expense, either procure for Buyer the right to continue using such Goods royalty-free or replace such Goods to Buyer's satisfaction with non-infringing goods of equal quality and performance. Nothing contained in these terms will be construed as granting or conferring any rights to any patents, copyrights, trademarks, know-how or other proprietary rights of either party acquired prior to or after the date of this Agreement.

## **10. BUYER'S PROPERTY.**

All drawings, specifications, or other materials furnished by the Buyer to Seller and all materials fixed or attached thereto, shall be and remain the exclusive property of the Buyer ("Buyer's Property") and will be clearly marked to indicate Buyer's ownership. Seller is liable for the risk of loss or damage to Buyer's Property until it is returned to Buyer. Seller will not substitute any property for Buyer's Property and will not deliver or make available Buyer's Property to any third party. Seller waives any rights to retain Buyer's Property and acknowledges that it is unconditionally obligated to return Buyer's Property upon demand.

## **11. CONFIDENTIAL INFORMATION.**

All information disclosed in connection with the Order, whether directly or indirectly, including by the observation or inspection of documents, equipment, materials or processes, specifications, suggestions, comments, and data,

including Buyer's Property, whether or not marked, designated or otherwise identified as "confidential," ("Confidential Information") heretofore or hereafter furnished or disclosed by Buyer to Seller is and shall remain the confidential and proprietary information of Buyer and shall be maintained in strict confidence and only used for purposes of fulfilling an Order. Seller agrees to keep confidential all Confidential Information and to take all reasonable steps to preserve the confidential and proprietary nature of such Confidential Information. Seller may disclose Confidential Information only on a need to know basis to its employees or other representatives, who have been advised of the confidential nature of the Confidential Information.

## **12. INDEMNIFICATION.**

Seller shall indemnify and hold harmless Buyer, its affiliates, and their respective officers, directors and employees, in full against all loss, liability, damages, costs and all expenses, including attorney fees and expert fees, arising directly or indirectly out of Seller's performance of work hereunder or the use or sale or importation of any Goods, including claims, actions or lawsuits alleging personal injury, property damage or economic damage, any design, manufacturing or defect relating to any part, any violation by Seller of any law, rule or regulation applicable to Seller or Seller's business, facilities or operations, any act or omission of Seller or its employees agents or sub-contractors designing, manufacturing, supplying or delivering the Goods and/or Services, including any injury, loss or damage to persons caused or contributed to by any of their negligence or by faulty design, workmanship or materials; or any other claims resulting from the acts or omissions of Seller or its employees, agents or sub-contractors. Seller shall not enter into any settlement without Buyer's written consent. This indemnification is in addition to Seller's warranty obligations.

## **13. TERMINATION.**

In the event the seller defaults in any of its obligations hereunder or upon the death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of Seller, assignment for the benefit of creditors by the calling of a meeting of creditors of, or the commencement of any proceeding under any bankruptcy or insolvency law wherein the Seller is the debtor or the bankrupt or the termination by a surety for Seller of its obligations under any contract to suretyship, Buyer may upon its election, cancel this Order and any other orders with Seller, for cause, without any penalty or other obligation to Seller.

## **14. FORCE MAJEURE.**

Neither Buyer nor Seller shall be considered in breach of an Order if prevented from performing due to a Force Majeure event, provided that it immediately notifies the other party of such event. If any period of Force Majeure preventing performance of work continues for more than fifteen (15) days, either party may terminate the effected Order by giving five (5) days written notice to the other party, in which case, Seller shall be paid for all work provided and/or performed to the date of termination. "Force Majeure" means any act or event that renders it wholly or partially impossible for the affected party to perform its obligations under this Order or delays such affected party's ability to do so, when such act or event (i) is beyond the reasonable control of the affected party, (ii) is not due to the fault or negligence of the affected party, and (iii) could not have been avoided by the affected party by the exercise of reasonable diligence (which may include, but is not limited to, acts of God, war, terrorist threats or acts, riots, or other civil unrest, changes in government regulations, actions, embargoes, or blockades in effect on or after the Effective Date, strikes, labor stoppages, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions; or other industrial disturbances.

## **15. INSURANCE.**

During the term of the Order and for 12 months thereafter, Seller shall, at its own expense, procure and maintain, in support of its obligations under these terms, policies of insurance of the types and in coverage amounts not less than the following minimum limits: (i) Workers' Compensation Insurance in accordance with local statutory requirements and Employers' Liability Insurance with limits of not less than \$100,000 for bodily injury and \$500,000 for each employee; (ii) Commercial General Liability Insurance, written on an occurrence basis, with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate Bodily Injury and Property Damage; (iii) Comprehensive Automobile Liability Insurance covering hired and non-owned vehicles with limits of \$1,000,000 per occurrence and Bodily Injury and Property Damage combined single limits; (iv) Umbrella Liability Insurance with limits of \$5,000,000. The Umbrella Liability Insurance would be in excess of the Commercial General Liability and Comprehensive Automobile Liability Insurance coverage. Buyer shall be named as an additional insured, on a primary and non-contributory basis, on both its Commercial General Liability Insurance policy(ies) and its Auto Liability Insurance policy(ies). All Supplier Policies shall waive subrogation rights as to Buyer and its insurers. Such Policies must be issued by reputable, financially responsible insurance carriers. Seller shall provide certificates of insurance upon Buyer's request. All certificates or policies furnished must include provisions that no material change, or cancellation or non-renewal of any policy will be made without thirty (30) days prior written notice to Buyer.

**16. BUSINESS CONDUCT AND COMPLIANCE.**

Seller warrants and agrees that it has complied, and will comply with (i) Fair Labors Standards Act as amended, and (ii) US Foreign Corrupt Practices Act of 1977, the UK Bribery Act, and all applicable anti-corruption and anti-bribery policies of Buyer, (iii) all applicable Laws regarding export-controlled goods, and (iv) all other applicable laws, codes, regulations, rules and orders. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller recognizes that Buyer (and its affiliates) requires its suppliers of goods and services to be equal employment employers and not discriminate against any employee or applicant or employment because of race, color, religion, sex, national origin, age, or disability. If this Order relates to the purchase of any food, drug, cosmetic or pesticide, or substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in production manufacturing, packing, processing, preparing, treatment packaging, transporting, or holding food), Seller hereby warrants that as of the date of shipment, the Goods compromising each shipment or other delivery shall (1) not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act; (2) not be an article which may not, under the applicable provisions of said act be introduced into Interstate commerce; and (3) be in conformance with the requirements of all applicable laws and regulations including the FFDCA and all other legislative or administrating promulgations and regulations relevant to Buyer's resale and its and its end customers' use of the Goods.

**17. DISPUTES AND APPLICABLE LAW.**

This Order shall be governed by and construed in accordance with the laws of the State of Texas. Buyer and Seller hereby agree that any legal action deemed necessary by either party hereto shall be brought in the federal or state courts of San Antonio, Bexar County, Texas and hereby consent to the personal jurisdiction of such courts in any such action over the parties hereto. If any legal action is necessary to enforce the terms contained herein, the prevailing party shall be entitled to recover its expenses of litigation, including reasonable attorney's fees, expert witness fees, and costs of court, in addition to any other relief which may be granted.

**18. SEVERABILITY.**

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

**19. SURVIVAL.**

Provisions of the Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Order including, but not limited to, the following provisions: 6, 11, 12 and 15.