

Terms and Conditions – Borton, LC

1. **Introduction:** These terms and conditions (“Terms and Conditions”) and a Borton, LC issued, duly signed, purchase order, together with any attachments incorporated therein (collectively, the “PO”), govern the purchase of goods (“Goods”) or services (“Services”) specified in the PO, (and individually or collectively constituting and sometimes referred to as the “Deliverables”) by Borton, LC and/or its affiliates (hereinafter “BLC”). The PO constitutes the entire and complete agreement between BLC and the entity identified on the PO (“Supplier”) with respect to the Deliverables described therein, except that if another written agreement governing the purchase of such Deliverables has been executed between BLC and Supplier (“Existing Agreement”), the terms of such Existing Agreement will prevail solely to the extent such Existing Agreement conflicts with these Terms and Conditions unless expressly stated otherwise in such Existing Agreement.
2. **Acceptance and Precedence of Terms:** Either Supplier’s return of an acknowledgment copy of the PO, shipment of such goods or Supplier’s commencement of performance of the PO, whichever occurs first, shall constitute Supplier’s acceptance of the PO, the terms of which shall supersede any and all other prior agreements, expressed or implied, written or oral, between Supplier and BLC with respect to the subject matter of the PO except as set forth explicitly above. No terms or conditions stated by the Supplier in its bid or proposal, acknowledgment, shipping or billing documentation or other correspondence shall be binding upon BLC if different from or in addition to the express provisions of the PO and such additional or different terms are hereby deemed material alterations and notice of objection and rejection is hereby given.
3. **Shipments and Packing:** Supplier will give BLC at least five (5) days prior notice of any shipment, specifying quantity, weight, content, noting any special handling requirements and referencing the applicable PO number. Supplier shall deliver the Goods, in good condition and properly packaged for shipment, by the delivery date listed on the PO. Supplier must use the correct packing and shipping classification descriptions to obtain lowest applicable shipping rates. No charge for packing or cartage will be allowed unless specifically authorized in writing by BLC prior to shipment. No shipment is deemed complete until BLC has received the bill of lading or transportation receipt and the Goods must have been physically received and accepted by BLC. Supplier assumes risk of loss or damage of any Goods sold under the PO until the time of actual receipt of the Goods by BLC at the specified destination. Unless otherwise indicated in the PO, shipping terms shall be FOB Destination Freight Prepaid; if shipping terms are specifically stated on the PO, where inconsistent those terms shall take precedence over this paragraph. The PO Number and Delivery Address, which appear on the face page of the PO, must appear on all invoices, packing/delivery tickets, cartons, correspondence, etc. If in order to comply with BLC’s required delivery date it becomes necessary for Supplier to ship by a more expensive way than specified in the PO, any increased transportation costs resulting therefrom shall be paid for by Supplier unless the necessity for such rerouting or expedited handling has been caused by BLC. Incorrect deliveries are Goods delivered in excess of the quantities stated on the PO or delivered more than three (3) business days prior to or later than the delivery date. At BLC’s option and Supplier’s risk and expense, BLC may store such Goods for a reasonable amount of time or reject such Goods and return them to Supplier. Supplier will be liable for and will promptly refund to BLC the amount of any loss or damage due to Supplier’s failure to properly preserve, pack, package or handle such Goods. Supplier shall not ship under reservation.
4. **Price and Taxes:** Supplier warrants that the prices for the Goods sold BLC are not less favorable than those offered to other customers of Supplier during the 182 days previous to the date of price quotation by Supplier or those prices currently extended to any other customer of Supplier for the same or similar Goods in any quantity. In the event Supplier reduces its price for such Goods during the term of the PO or in the 182 days following delivery and payment for the provided goods, Supplier agrees to reduce the prices thereof correspondingly. Price and delivery terms are as stated on the face of the Order. Unless otherwise provided on the face of the PO, the price includes (i) all costs to comply with the Terms and Conditions of the PO, (ii) any and all taxes, including sales, use, excise, value added and other taxes, and (iii) fees, duties or other governmental impositions on the sale of the Goods or Services covered by the PO. If BLC is required to pay any taxes or other impositions, Supplier will promptly reimburse BLC.
5. **Delays in Delivery of Goods:** Time is of the essence. Supplier shall, at its own expense, deliver Goods by the most expeditious shipping method if the delivery schedule is endangered for any reason other than BLC’s fault. Supplier shall not be responsible for delays resulting from occurrences beyond its control which it could not have reasonably anticipated and provided for; In such event, Supplier shall give BLC written notice within five (5) days of such occurrence and BLC shall determine an equitable extension of time for delivery. Supplier’s failure to so notify BLC of such delay shall constitute a waiver of Supplier’s right to a time extension. There shall be no price adjustment by virtue of any such time extension. If delivery of Goods or rendering of Services is not completed by the date promised, BLC reserves the right, without liability and in addition to its other rights and remedies, to terminate the PO by notice effective when sent by BLC as to Goods not yet shipped or Services not yet rendered and to purchase substitute Goods or Services elsewhere and charge Supplier with any additional cost or loss incurred.
6. **Invoices and Payment:** Each invoice must be separately numbered and must show items, quantities and prices and applicable discounts; be addressed to “BORTON, LC”; include the PO number, BLC name and the Delivery Address on the face thereof; be strictly consistent with the PO; and be accompanied by the bill(s) of lading or transport receipt(s), unless otherwise specified. When applicable, each invoice must itemize all Federal, State or local taxes as well as any import/export duties and fees imposed by law (regardless of point of origin) upon or on account of, the manufacture, sale, transport/shipment or delivery of the Goods or Services furnished for the PO, unless otherwise indicated by BLC in the PO. If not so itemized, prices will be deemed to include all such taxes and the price or prices will not be changed as a result of Supplier’s failure to include therein any such applicable tax. Any invoice deviating from these requirements will be returned to Supplier for correction and/or acceptable support documentation. Cash discounts will apply from the date a correct, properly supported invoice is received by BLC or the date Goods are received, whichever is later. All payments to Supplier shall be made in United States Dollars unless otherwise indicated within the PO. The terms of payments as shown in the PO shall take precedence over terms of

payment shown on Supplier's invoices or elsewhere. Supplier shall submit with each invoice waivers of liens and any other documents requested by BLC in order for BLC to secure payment(s) from the Owner for the Supplier's invoices. No payments are due until Goods are accepted by BLC and except as otherwise set forth on the face of the PO, BLC will pay Supplier all undisputed amounts within forty-five (45) calendar days after receipt of the applicable invoice, receipt of the Goods (or performance of the Services) or receipt of payment from Owner, whichever is later or within such lesser period of time as is required by law. Except as otherwise expressly provided on the face of the PO, all payments are contingent on acceptance by BLC of the Goods or materials supplied or the Services performed.

7. Inspection, Acceptance and Returns: BLC will have a reasonable period of time after delivery or performance within which to inspect and accept the Deliverables. The receipt of the Deliverables, the inspection or non-inspection of or payment for the Deliverables will not constitute acceptance of the Goods or Services and will not impair BLC's right to (i) reject nonconforming Goods or Services, (ii) recover damages and/or (iii) exercise any other remedy or remedies to which BLC may be entitled. Further, acceptance of the Deliverables will not waive any rights or remedies accruing to BLC as a result of any breach of the PO. Rejected Goods may be returned to Supplier or otherwise disposed of at Supplier's cost and expense. Goods rejected and Goods supplied in excess of quantities called for herein may be returned to Supplier at its expense and, in addition to BLC's other rights, BLC may charge Supplier all expenses of unpacking, examining, repacking and reshipping such Goods. In the event BLC receives Goods whose defects or nonconformity is not apparent on examination, BLC reserves the right to require replacement as well as payment of damages. Nothing contained in this purchase order shall relieve Supplier in any way from the obligation of testing, inspection and quality control.
8. Changes: BLC shall have the right (by revision to the PO or through revised drawings, specifications or other transmittals), to make changes in the drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any change affects the price or delivery date of such goods, Supplier shall immediately notify BLC in writing and shall, within ten (10) days (or per the Owner's contract, whichever is less) of the date such revision is mailed or otherwise delivered to Supplier, submit a written claim for adjustment of price and/or delivery date. If Supplier fails to do so, Supplier waives any claim for an adjustment. Supplier shall not suspend performance while BLC and Supplier are in the process of making revisions and any related adjustments. Interchange and liaison with BLC's technical personnel shall not vest Supplier with authority to change the specifications, terms or provisions of the PO or these Terms and Conditions unless it is evidenced in writing by an authorized procurement representative of BLC. If such authorized written change(s) result(s) in delay or any increase or decrease in cost, Supplier shall notify BLC immediately and negotiate an equitable adjustment provided, however, that Supplier shall in all events proceed diligently to supply the Goods or perform the contracted work or Services as so changed.
9. Suspension of Work: BLC may order Supplier in writing to suspend, delay or interrupt all or any part of the work for a period not to exceed ninety (90) consecutive days. An adjustment shall be made for any directly resulting increase or decrease in the cost of performance. Adjustment shall also be made in the delivery or performance dates and any other contractual provisions affected. However, no adjustment shall be made to the extent that performance would have been so suspended, delayed or interrupted by any other cause including the fault or negligence of Supplier. Also, no adjustment shall be made under this clause for any suspension, delay or interruption for which an equitable adjustment is provided for or excluded under any other provision of this contract. No claim under this clause shall be allowed unless the claim in a stated amount is asserted in writing within ten (10) calendar days after the termination of such suspension, delay or interruption.
10. Termination and Cancellation: BLC reserves the right to terminate the PO or any part thereof for its sole convenience. In the event of such termination, Supplier shall immediately stop all work and shall immediately cause any of its suppliers or subcontractors to cease such work. Supplier shall not be paid for any work done after receipt of the notice of termination nor for any costs incurred by Supplier's suppliers or subcontractors which Supplier could reasonably have avoided. If production of the Goods or materials or performance of the Services hereby ordered has not commenced, BLC's liability, in the event of such cancellation, shall be limited to actual expenditures incurred by Supplier in furtherance of the PO. If production of the Goods or performance of the Services has commenced, BLC's liability shall be limited to acceptance and payment for Goods and Services the manufacture or performance of which has been completed in accordance with the PO and to the payment for actual expenditures incurred by Supplier with respect to the balance of the order.

BLC may also terminate the PO or any part thereof for cause in the event of any default by the Supplier or if the Supplier fails to comply with any of these Terms and Conditions. Late deliveries, Goods which are defective or which do not conform to the PO and failure to provide BLC, upon request, reasonable assurances of future performance shall all be grounds allowing BLC to terminate the PO for cause. In the event of termination for cause, BLC shall not be liable to Supplier for any amount and Supplier shall be liable to BLC for any and all damages sustained by reason of the default which gave rise to the termination. BLC has the right to terminate the PO with respect to Services, at any time, with or without cause, by providing Supplier with written notice. Termination is effective immediately unless otherwise specified in the termination notice but BLC will pay any fees previously accrued for Services performed as set forth in the PO. Upon the occurrence of any one of the following events, BLC will have the unrestricted right, at its option, to cancel and terminate the PO without cost or liability to BLC: (1) Supplier's insolvency or inability to meet obligations as they become due; (2) filing of voluntary or involuntary petition of bankruptcy by or against Supplier; (3) institution of legal proceedings against Supplier by creditors or stock holders; or (4) appointment of a receiver for Supplier by any court of competent jurisdiction.
11. Representations and Warranties: Supplier represents, warrants and covenants that:
 - 1) Goods (and the manufacture, packaging, storage, handling, transportation and delivery thereof) supplied:
 - a. will conform to the specifications, drawings, samples or other descriptions contained in the PO or provided or approved by BLC;
 - b. will be merchantable, of satisfactory quality, of good material and workmanship and free from defects; and

- c. if ordered for a specific purpose, will be fit for their intended purpose; and in the absence of contrary specifications, will be of the highest grade and quality.
- 2) Services provided will be performed in a professional and workmanlike manner, in accordance with accepted standards and comply with all of BLC's safety and other requirements communicated to Supplier.
- 3) Supplier will:
- a. deliver the Goods and perform the Services that are the subject of the PO by the delivery and performance dates set forth on the face of the PO;
 - b. at its own cost, initiate, maintain and supervise all environmental and safety precautions and programs in connection with the Services and comply with all of BLC's and the project Owner's environmental, health and safety rules;
 - c. at its own cost, obtain and maintain all necessary permits, license(s) or other approvals and give all notices legally required to provide the Services;
 - d. at its own cost, provide all labor, materials, machinery, equipment, tools, transportation and other facilities and services needed for the proper execution and completion of the PO, unless otherwise provided on the face of the PO;
 - e. be solely responsible for all methods and procedures of delivering and coordinating all portions of the Services, unless otherwise provided on the face of the PO;
 - f. be solely responsible for the handling, transportation and disposal of all materials, substances and chemicals that Supplier or any subcontractor brings onto the project premises and any waste generated or resulting from the use thereof and not dispose or permit the release of any materials, substance or chemical (or any waste generated or resulting from the use thereof) on BLC's or the project premises;
 - g. inspect any non-Supplier owned equipment, tools, scaffolding and/or other materials prior to use, which use shall only occur upon the express written permission of BLC;
 - h. not use any non-Supplier owned equipment or materials unless they are suitable for their intended use and will return all non-Supplier owned equipment and materials in a like condition in which they were borrowed;
 - i. accept full responsibility for safety and management over persons and property within that portion of BLCs' project premises where the Services are being performed;
 - j. warn its subcontractors and its and their respective employees, agents, representatives, guests and visitors of any risks, hazards or dangers, whether latent or patent, ("Dangers") associated with the project premises;
 - k. at least once daily, inspect for and eliminate any Dangers or, to the extent any Dangers cannot be eliminated, advise BLC and warn its employees and visitors of these Dangers;
 - l. keep the project premises free from accumulations of materials and refuse and, upon completion of the Services, promptly remove same and all of Supplier's machinery, tools and equipment and any unused materials, substances or chemicals; and
 - m. remove Supplier employees, representatives and other personnel providing services from BLC's premises upon request of BLC.
- 4) No liens or claims will be filed, maintained or enforced by Supplier or its suppliers or subcontractors for any service performed or materials provided.
- 5) These Representations and Warranties apply to both the primary Services and any Related Services (defined elsewhere in this document) rendered by Supplier or its contractors or consultants or suppliers.
12. Compliance with Laws: All Goods and Services provided under the PO shall comply with all applicable codes, laws, regulations, executive orders, standards and ordinances. Supplier certifies that any chemical substance(s) furnished pursuant to the PO has been properly labeled and that proper information on the substance(s), e.g., Material Safety Data Sheets, has been provided to BLC pursuant to all applicable codes, laws, regulations, executive orders, standards and ordinances. Supplier agrees to hold BLC harmless from and to reimburse BLC for any and all costs, damages and expenses (including attorneys' fees) suffered directly or indirectly through the failure of Supplier to comply with any such applicable code, law, regulation, executive order, standard and ordinance. Supplier agrees that the Goods and Services will not in any way directly or indirectly originate from or be provided by any country, person or entity which would cause BLC to be in violation of or be penalized by United States or other applicable economic sanctions laws. Supplier further agrees that it shall not engage in the employment of child, forced, indentured, involuntary, prison or uncompensated labor. In addition to any other remedies contained herein, BLC shall have the right to immediately terminate this agreement and any other agreements with Supplier if BLC determines that Supplier is in any violation of this section.
13. Patent Protection: Supplier will, at its sole expense, defend and pay all damages and costs awarded in any proceeding brought against BLC, its employees, agents or customers in which it is claimed that the manufacture, sale or use of any Goods or their parts furnished in response to the PO constitutes an infringement of any patent or other proprietary information right. No rights in any plans, drawings or other data furnished by BLC or derived therefrom shall pass to Supplier in fulfillment of the PO or be released to third parties without the written consent of BLC. To the extent that the Goods ordered are manufactured to designs not originated by BLC, Supplier guarantees that the sale and/or use of such Goods will not infringe any United States or foreign patents. Supplier agrees to indemnify and save BLC, its affiliates, employees or agents and its customers, harmless from any expense, loss, cost, damage or liability that may be incurred on account of infringement or alleged infringement of patent rights against BLC.
14. Confidential, Intellectual and Proprietary Information: All drawings, specifications, technical data, and other information furnished to Supplier by or through either BLC or BLC's agent in connection with the PO are and shall remain the property of BLC, shall not be copied or otherwise reproduced or used in any way except in connection with performance of the PO or disclosed to third parties or used in any manner detrimental to the interests of BLC. Supplier shall consider all information furnished by BLC to be confidential and shall not disclose any such information to any other person or use such information

- itself for any purpose other than performing the PO unless Supplier first obtains written permission from BLC to do so. This paragraph shall apply to drawings, specifications or other documents prepared by Supplier for BLC in connection with the PO. Supplier shall not advertise or publish the fact that BLC has contracted to purchase goods from Supplier nor shall any information relating to the PO be disclosed without BLC's first obtained written permission. Upon completion, termination or cancellation of the PO, Supplier shall promptly return to BLC or BLC's agent all drawings, specifications, technical data and other information furnished by BLC or BLC's agent in connection with the performance of the PO. All drawings, specifications and technical data furnished by Supplier as "proprietary" or "confidential" shall remain the property of Supplier and shall not be copied or otherwise reproduced or used in any way by BLC except in connection with the project for which they are furnished and will not be disclosed to third parties except BLC's agent or used by BLC in any manner detrimental to Supplier.
15. Assignment and Subcontracts: Neither the PO nor any interest under it shall be assignable nor any required duties delegable by Supplier. No major or critical portion of the PO shall be subcontracted without the first obtained written consent of BLC.
 16. Review and Comment: Drawings, specifications and calculations submitted by Supplier to BLC with a request for review may be reviewed and commented upon by BLC. BLC's review and comment shall relate only to the general arrangement and in no event will BLC's review and comment relieve Supplier of the responsibility to comply with any of the provisions of the PO.
 17. Related Services: Whenever Supplier furnishes personnel for supervision, startup, testing, inspection, related services or maintenance (the Work), the following provisions shall apply, in addition to other applicable provisions of the PO including compensation: Supplier represents that Supplier, its agents and employees are qualified and competent to perform the Work and that all tools and equipment furnished by Supplier in its performance of the Work are, and shall be, kept in good working order. To the extent that Supplier performs any Services or Work related to the PO on site at the Owner's facility, the Supplier shall at all times comply with all applicable OSHA or MSHA standards, as required, and perform the Work or Services in a safe manner that complies with BLC's safety program as well as Owner's site-specific safety plan, if any. Any Work or Services not so performed or not in conformity with the PO shall be corrected by Supplier at no cost to BLC. If such deficiencies are not immediately corrected, BLC may cause the same to be corrected at Supplier's cost. This remedy is in addition to any other remedies, in law or equity, available to BLC. Within a reasonable time after receipt of the notice, BLC will determine if the Work has been completed to its satisfaction; if so, BLC will advise Supplier, in writing, of its final acceptance; if not, BLC will notify Supplier of its lack or failure of performance and Supplier will take remedial action as described in this Section and will repeat the procedure stated until the Work has been satisfactorily completed and accepted. The provisions of this paragraph are to be read in concert with and will be applied consistent with the provisions of the section above entitled Inspection, Acceptance and Returns.
 18. Insurance: Supplier agrees, in connection only with the performance of Work or Services by Supplier upon Owner's or BLC's premises, to obtain and keep in force during the term thereof and for at least one (1) year thereafter the below-described insurance. Coverage shall be carried with insurance companies with an AM Best company rating of "A" or higher. Supplier will furnish BLC with certificates evidencing such insurance coverage prior to commencing any on-site Work or Services. Supplier shall maintain insurance with at least the following minimum limits and coverage and keep in force as follows:
 - a. -Worker's Compensation: statutory and as required under laws applicable to the project work, Owner and BLC shall be provided a waiver of subrogation to the extent allowed by law.
 - b. -Employer's Liability Insurance: \$1,000,000/ \$1,000,000/ \$1,000,000.
 - c. -Commercial Automobile Liability: \$1,000,000 combined single limits for owned, non-owned and hired vehicles. Owner and BLC shall be added as an additional insured and shall be provided waivers of subrogation to the extent allowed by law.
 - d. -Commercial General Liability: \$1,000,000 Each Occurrence/ \$2,000,000 General Aggregate (must apply per project)/ \$2,000,000 Products and Completed Operations. Owner and BLC shall be added as primary and non-contributory additional insured including completed operations and shall be provided waivers of subrogation to the extent allowed by law.
 - e. -Excess Liability: \$1,000,000 excess of Employers Liability, General Liability and auto liability.
 19. Rental Equipment: In the event the PO includes the leasing, renting or use of rental equipment, Supplier and any person providing the rental equipment shall assume the responsibility for providing insurance in the amount of the full value of said equipment and shall hold BLC harmless from any damage or loss to said equipment whether or not such damage or loss was caused in whole or in part by the negligence, strict liability or other actions or inactions of BLC. Any conflict that may exist between the Terms and Conditions hereof and any additional lease, rental agreement or other document pertaining to the use of rental equipment shall be resolved in accordance with the Terms and Conditions of the PO.
 20. Ownership of Inventions: With respect to new or modified Goods, the parties agree that all rights, titles and interest in any and all inventions (including discoveries, ideas or improvements, whether patentable or not), which are conceived or made during or after the term of the PO and are (i) based upon or arising from BLC's information, or (ii) developed specifically for BLC, will belong to BLC. In the event that Supplier produces works of authorship specifically for BLC under the PO ("Works"), the Works will be deemed "works made for hire" and BLC will receive all rights, title and interest thereto. However, if any Works are not determined to be "works made for hire", Supplier agrees to assign, and hereby assigns, to BLC and its successors the entire right, title and interest in and to the Works. Upon request, Supplier shall sign all documents and otherwise cooperate with BLC as necessary to assign, confirm and perfect the exclusive ownership of all Intellectual Property rights to BLC. Supplier agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which may be brought against BLC, its employees, officers and directors or its agents, customers or other suppliers for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of Goods or Services furnished. Supplier further agrees to indemnify BLC, its employees, officers and directors, agents and customers against any and all expenses, losses, royalties, profits and damages, including court costs and attorney's

fees, resulting from any such suit or proceeding, including any settlement. BLC may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires and the costs of such representation shall be paid by Supplier. Nothing in the PO will affect the pre-existing Intellectual Property rights of the parties.

21. **Audit:** Subject to reasonable confidentiality obligations and within 10 days of BLC's request, BLC will have the right to audit and inspect the records and facilities of Supplier and Supplier's agents, representatives and subcontractors used in performance of the PO or relating to the Goods or Services to the extent reasonably necessary to determine Supplier's compliance with the PO. Supplier will provide BLC or its third-party designee conducting the audit or inspection with reasonable assistance, including without limitation access to buildings, appropriate personnel and work space(s). BLC's audit, inspection or failure to conduct any audit or inspection will not release Supplier from any of its obligations.
22. **Remedies:** BLC's remedies shall be cumulative and in addition to any further remedies provided in law or equity. No waiver of a breach of any of the provisions of the PO shall constitute a waiver of any other breaches. BLC may demand assurance, by bond or otherwise, from Supplier that it will abide by its guarantees, representations and warranties. In addition, where procured Goods are unique, long lead, sole sourced, made to BLC specification(s) or for any other reason deemed by BLC to be critical or unavailable elsewhere, BLC may demand specific performance in addition to any other remedies for breach.
23. **Risk of Loss:** Supplier assumes the following risks: (a) all risks of loss or damage to all products, work in process, materials or other things until the delivery and acceptance thereof as herein provided; (b) all risks of loss or damage to third persons and their property until the delivery and acceptance of all the Deliverables; (c) all risks of loss or damage to any property received by Supplier from BLC, or held by Supplier or its supplier(s) for the account of BLC; (d) all risks of loss or damage to any of the Goods or materials or portion thereof rejected by BLC from the time of shipment thereof to Supplier until re-delivery thereof to BLC.
24. **Indemnification:** Supplier agrees to indemnify and hold BLC, its affiliates and its and their directors, officers, employees, agents and representatives harmless from and against any and all liability, loss, damage, fine, penalty, cost or expense (including reasonable attorneys' fees, court and other allowable costs and expenses) to the extent arising out of or resulting from (1) any non-conforming Goods or Services; (2) any alleged or actual, direct or contributory infringement or misappropriation of any patent, copyright, trade secret or other proprietary right arising from the purchase, use or sale of the Goods or Services provided by Supplier; (3) any leak or spill of any materials, substances or chemicals while being transported or delivered to or while on BLC's or the project premises; (4) any breach by Supplier of any term or condition contained in the PO; (5) the use of any non-Supplier-owned materials or equipment or any person in the employ of BLC to perform any of the services under the PO and/or (6) the negligent acts or omissions or willful misconduct of Supplier, Supplier's subcontractors, employees, agents, representatives and any person performing services under the PO. Without limiting the foregoing, BLC may require Supplier to re-deliver against non-conforming Goods or re-execute non-conforming Services at Supplier's sole cost and expense.

Supplier's obligation to indemnify will survive the expiration or termination of the PO by either party for any reason. Supplier may, at its option, conduct the defense of any third-party action and BLC will cooperate with Supplier's defense as reasonably requested. If the use or sale of any Goods is enjoined as a result of any action or proceeding, in addition to such other rights or remedies that BLC may have hereunder or by law, Supplier, at no expense to BLC, will obtain for BLC and its customers the right to use, or will substitute, an equivalent item acceptable to BLC, and extend this indemnity with respect to such item. In the event that Supplier is unable to secure such rights of use or to secure an equivalent item as a substitute for BLC or its customers, Supplier will indemnify BLC and its customers for any and all losses or damages sustained by reason of such injunction.
25. **Force Majeure:** Each party will be excused from a failure to perform or a delay in performance to the extent caused by events beyond its reasonable control. The party claiming excuse from performance must take reasonable efforts to remove the cause of its inability to perform or its delay in performance. The party claiming excuse from performance must give prompt written notice to the other party of the event, specifying its nature and anticipated duration. If Supplier's performance is excused or delayed for more than ten (10) calendar days, BLC may terminate the PO by giving Supplier written notice, which termination will become effective upon communication of the notice. If BLC terminates the PO, BLC's sole liability will be to pay any balance due for conforming Goods and Services delivered by Supplier before receipt of BLC's termination notice.
26. **Litigation:** In the event of litigation between BLC and Supplier, if BLC prevails Supplier will be liable for all awards or judgments as well as professional fees and costs including, without limitation, attorneys' fees, court and other allowable costs and expenses, incurred by BLC. Supplier also consents to join in any proceeding arising out of the PO brought against BLC by any party or in any claim action related thereto.
27. **Governing Law:** The PO, and any resulting contract, shall be governed by and construed under the laws of the State of Kansas and without regard to principles of conflicts of laws, as the same may be from time to time be in effect, including, and without limitation, the Uniform Commercial Code as in effect in the State of Kansas. All claims arising out of or relating to the PO will be litigated exclusively in the federal or state courts of Sedgwick County, Kansas, USA and Supplier consents to personal jurisdiction in those courts.
28. **Waiver:** BLC's failure or delay in exercising any right or remedy with respect to the PO will not operate as a waiver of that right or remedy. Any waiver of a right or remedy must be in writing and signed by an authorized officer of BLC.
29. **Severability:** If any provision of the PO or these Terms and Conditions is held by any court of competent jurisdiction to be invalid, illegal or unenforceable, either in whole or in part, that holding will not affect the validity, legality or enforceability of the remaining provisions, or any part thereof, of the PO or these Terms and Conditions, all of which will otherwise remain in full force and effect.
30. **No Exclusivity:** Nothing herein is intended nor will be construed as limiting BLC's ability to procure any products or services from anyone.

31. Background Checks (Services): If BLC requires Supplier to conduct background checks on Supplier's personnel, Supplier will do so according to the policies provided by BLC and will provide confirmation of the results of such checks to BLC or its designated recipient upon request. If BLC requests its own background checks, Supplier will obtain written consent from its personnel and supply information reasonably requested by BLC. Supplier will require its personnel performing Services to provide prompt notice of any change of status after the initial background check and will notify BLC of any change of status.
32. Notices: All notices, requests demands and other communications that are required or may be given pursuant to the PO will be in writing and sent by mail, overnight courier or facsimile, to (a) Supplier at the address indicated in the PO, or (b) BLC, at the address indicated in the PO, or to such other address as one party may later specify to the other in writing.

Delivery of any such notice(s) will be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation by the transmitting party if by facsimile transmission; (c) at the time of receipt if given by electronic mail to the e-mail addresses set forth in the PO or otherwise communicated to the other party; provided, however, that a party sending notice by electronic delivery will bear the burden of authentication and of proving transmittal, receipt and time of receipt; (d) on the third day after mailing if mailed by first class mail, return receipt requested, postage prepaid and properly addressed as set forth in this Section; or (e) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours for overnight delivery against receipt, and properly addressed as set forth in this Section.
33. Miscellaneous: The relationship of Supplier and BLC is that of independent contractor. The rights and remedies herein provided are in addition to those available to either party at law or in equity. Any reproduction of the PO by reliable means will be considered an original of the PO. The parties expressly waive any right to a jury trial regarding disputes related to the PO.
34. Set off: All claims for money due or to become due from BLC shall be subject to deduction or set-off by BLC by reason of any counterclaim arising out of this or any other transaction with Supplier.
35. Limit on BLC's Liability, Statute of Limitations: In no event shall BLC be liable for anticipated profits or for incidental or consequential damages. BLC's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from the PO or from the performance or breach thereof shall in no case exceed the price allocable to the Goods or Services or unit thereof which gives rise to the claim. BLC shall not be liable for penalties of any description. Any action resulting from any breach on the part of BLC as to the Goods or Services delivered must be commenced within six months after the cause of action has accrued.
36. Third Party Beneficiaries: Except as expressly stated herein, nothing in the PO is intended to confer benefits, rights or remedies unto any person, firm or entity other than the parties hereto or their permitted successors or assigns.
37. Headings: The headings contained in the PO are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of the PO.