

# RETECH Systems LLC

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## Vendor PO Terms and Conditions

These are the standard Terms and Conditions for Purchase orders for the purchase of new equipment, materials or services from Retech. If you have any specific questions regarding this document, please contact our Purchasing Manager, Kathleen Goss ([kathleen.goss@retechsystemsllc.com](mailto:kathleen.goss@retechsystemsllc.com) or +1-707-462-6522 Ext. 144).

### GENERAL TERMS AND CONDITIONS OF PURCHASE FOR SERVICES, MATERIAL & EQUIPMENT

#### I. DEFINITIONS:

"Purchaser" shall mean Retech, "Seller" shall mean the recipient of the Purchase Order as identified on the face of this Purchase Order. "Product" shall mean all or any part of the goods, work, and services to be provided by Seller to Purchaser under the terms of this Purchase Order.

"Specifications" shall mean all descriptive items made available to Seller concerning the design characteristics, proposed use, intended operation or purpose of all or any part of the product.

"Owner" shall mean the entity for which purchaser is constructing or engineering the project in which the product is ultimately installed or used. "This contract" or any other similar phrase shall mean the contract between Purchaser and Seller resulting from Seller's acceptance of this Purchase Order.

#### II. ACCEPTANCE:

Purchaser expressly limits Seller's acceptance of the Purchase Order to the terms and conditions stated herein. Acknowledgement by Seller of the Purchase Order is provided for administrative convenience, but failure to return, sign, or complete any portion of this acknowledgement section of the Purchase Order will not affect the validity of this contract after acceptance by initiation of performance.

#### III. TERMS:

Terms of this Purchase Order shall be as set forth on the face of this Purchase Order. The timing of payments from Purchaser to Seller is conditioned upon receipt by Purchaser or shipment F.O.B. source, whichever is applicable, of the Product prior to scheduled payment date. If Purchaser receives the invoice prior to such shipment or receipt of the Product, the terms as set forth on the face of this Purchase Order shall be measured from the date of such receipt or shipment of the product rather than the date of receipt of invoice.

#### IV. WARRANTY:

Seller warrants to Purchaser and Owner that the Product will a) conform to the specifications, b) be of good material and workmanship, c) be free of defects, d) be merchantable and, e) be fit for the

purpose or purposes that are set forth in this Purchase Order. If Seller is responsible for design, Seller warrants that the Product will be free of defects in design; approval by Purchaser of designs furnished by Seller shall not relieve Seller of its obligations under this warranty. Seller also warrants that the product is of sufficient size or capacity to perform per the Specifications. In the event the Product, in normal use and service and under proper operation, shall fail for whatever reason, Seller shall repair or replace the product free of cost to Owner and Purchaser, including all labor costs of removal, repair, and installation, for a period equal to the greater of eighteen (18) months from shipment or during the first twelve (12) months of operation, whichever shall occur first. No inspection or acceptance of the Product or approval of the Seller's designs for the Product, by either Purchaser or Owner, shall waive or reduce any warranty, and it is agreed that all inspections, acceptances or approvals shall be conditional pending installation and testing of the Product for latent defects. When the Product is subject to inspection, as set forth in the body of the Purchase Order, Seller shall not ship the product without final release from Purchaser or Owner. Failure to obtain such release before shipment may result in the Product being returned to Seller at Seller's expense for final inspection.

#### **V. PATENTS:**

Seller warrants to Purchaser and Owner that Purchaser's and Owner's purchase, use or sale of the Product will not infringe any patent, invention, design, trademark, or copyright. Seller hereby agrees to indemnify and hold harmless Purchaser and Owner and their respective officers, agents, employees, and vendors against any loss, expense, damage, liability, claim or demand for actual or alleged patent infringement based upon purchase, use, or sale of the Product. If the purchase, use, or sale of the Product is held to constitute infringement, Seller may, at its expense, [a] obtain for Purchaser and Owner the right to continue purchasing, using or selling the Product; [b] replace the Product with the non-infringing designs, processes or equipment; or [c] modify said designs, processes or equipment to become non-infringing; provided, however that no such replacement or modification shall in any way diminish the rated capacity or performance of the Product. Purchaser and Owner shall be entitled to be represented in any infringement suit, action or proceeding by counsel of their selection at their own expense. The provisions of this paragraph shall not apply to designs, processes, or equipment designed or provided by Purchaser or Owner.

#### **VI. DRAWINGS, DIES, AND PATTERNS:**

All special drawings, dies, patterns, or other items supplied by the Purchaser shall be the property of the Purchaser and shall be preserved in good condition and returned when this contract has been completed or terminated. No special drawings, dies, patterns, or other items supplied by the Purchaser or made by Seller for the use of or delivery to Purchaser or Owner or for the use by Seller in supplying Purchaser or Owner shall be used by Seller for any purpose other than supplying Purchaser or Owner without Seller first obtaining the written consent of Purchaser thereto. If material, equipment, special drawing, dies, patterns, or other items are furnished by Purchaser for the performance of this contract, all risk of loss therefore or damage thereto by fire or other hazards shall be upon Seller until the material equipment, special drawing, dies, patterns, or other items have been re-delivered to Purchaser. Seller shall permit reproduction by Purchaser or Owner of all drawings and data supplied hereunder for the purpose of repairing and maintaining items purchased notwithstanding any legends and notations shown on the drawings or data to the contrary. All drawings, performance curves, and other information of similar nature shall be identified with this Purchase Order number, item number, and tag number.

## **VII. MODIFICATIONS:**

Purchaser, by notice in writing to Seller, and with Seller's written approval, shall have the right to change the Specifications from time to time, and Seller agrees to modify or revise the Product to conform to the revised Specifications. Within fifteen (15) days after notification by Purchaser of any change in the Specifications that may delay delivery of the Product or produce a change in Seller's cost, Seller must notify Purchaser in writing of such delay or cost change. This contract will be modified in accordance with these changes only if Purchaser expressly so agrees in writing. In the absence of agreement on changes in price caused by any change in Specifications, the price shall be changed on the basis of actual change in Seller's net variable cost resulting directly from such changes in the Specifications.

## **VIII. ASSIGNMENT:**

This contract and any payments to be made hereunder may not be assigned or transferred by Seller without the prior written consent of Purchaser. Similarly, Seller shall not subcontract any substantial portion of the work to be performed by it under this contract without the prior written consent of Purchaser.

## **IX. TERMINATION:**

Purchaser may terminate at any time all or any portion of this contract by written notice to Seller. Such notice shall state the extent and the effective date of such termination, and upon receipt thereof Seller shall comply with any instructions relating to work stoppage. If Purchaser terminates for reasons of convenience, Purchaser shall reimburse Seller the lesser of [a] the amount by which the price which Seller would be required to pay upon full performance of this contract exceeds the price for which the product could reasonably have been sold to a third party if produced in accordance with this Purchase Order, or [b] production costs actually incurred by Seller, plus a proportionate part of the profit which Seller would have made from full performance of this contract, such proportionate part corresponding to the percentage of completion of performance of the Product at the time notice of termination was effective, less any salvage value of materials retained by Seller. Purchaser may, at its option and expense, hire an independent accountant to conduct an audit to examine and certify that the charges referred to in paragraph IX are in accordance with standard accounting procedures, and Seller shall use its best efforts to cooperate with such audit. Such audit and audit findings shall be treated as purchaser's confidential information. At no such time shall the termination cost exceed the full value of the purchase price.

## **X. DELIVERY:**

Time is of the essence with regard to the delivery dates specified on this Purchase Order. Seller recognizes Purchaser's and Owner's urgent need for the Product and agrees that the work shall be fully completed by the date(s) set forth in this Purchase Order. Failure by Seller to make shipment on the date(s) agreed to in this Purchase Order shall entitle Purchaser, at its option, to cancel all or any part of this contract, and Purchaser shall be entitled to reimbursement for any damages, claims, penalties or settlement payments made by Purchaser to Owner or others as a result of any failure by Seller to meet specified date(s) or delivery or performance.

## **XI. CONFIDENTIAL INFORMATION:**

Seller agrees to keep confidential all information relative to this Purchase Order. Drawings and prints shall not be reproduced or copied in any manner by Seller and shall not be used for manufacture by any persons other than Seller. Any information which Seller may disclose to

Purchaser shall not be deemed to be confidential or proprietary information and shall be acquired by Purchaser free from any restriction as part of consideration for this contract.

**XII. INDEMNITY:**

Seller hereby agrees to indemnify and save harmless Purchaser and Owner and their respective officers, agents and employees from and against any loss, cost, damage or bodily injury (including death) of whatsoever kind or nature arising out of an act or a failure to act of Seller or its employees, contractors or agents at premises owned, leased, occupied by or under the control of Purchaser or Owner or arising out of the failure of the Product furnished by Seller pursuant to this Purchase Order.

**XIII. EFFECTIVE DATE OF CODES:**

All codes, regulations, specifications and other documents referenced in the Purchase Order shall be the edition, including addenda, in effect on the latter of [a] the date of the Purchase Order or [b] the date of any document on which Purchaser makes the reference "Approved for Construction."

**XIV. INCONSISTENCIES OR CONTRADICTIONS:**

In the event of a conflict or inconsistency between the Purchase Order, these terms & conditions, and the Specifications, or in the case of any omission or error in such Specifications, Seller shall contact Purchaser immediately for clarification.

**XV. NOTICE OF POTENTIAL DELAYS:**

Seller agrees to notify Purchaser as soon as Seller has reason to believe that actual or potential labor disputes, weather conditions, acts of God or other distinct causes, whether or not beyond Seller's control, could possibly prevent or delay performance of any of Seller's obligations under this Purchase Order. Seller agrees to insert the substance of this clause in any lower-tier subcontract, except that such lower-tier subcontracts shall provide that notice shall be to the next higher-tier contractor.

**XVI. FORCE MAJEURE:**

If government actions, regulations, fires, strike, accidents or similar causes beyond Seller's control prevent Seller from performing any of its obligations under this contract, the specific obligation(s) under this contract which Seller is prevented from performing will be suspended for a reasonable period of time during the continued existence of such clause; provided, however, that the failure of Seller to give notice as required by Paragraph XV (Notice of Potential Delays) may give rise to damages for costs or losses that could have been avoided by the Seller if such notice had been given, and no cause shall be construed to excuse such failure of notice. Increases in the cost to Seller of goods, labor and energy used to make the Product are within the contemplation of both parties, and such cost increases, regardless of the extent or cause, shall not operate to relieve Seller or its obligations hereunder.

**XVII. LIENS:**

Seller agrees to indemnify and save harmless Purchaser or Owner against any and all liens and encumbrances arising out of the performance or nonperformance of the Purchase Order by Seller.

**XVIII. SUBSTITUTIONS:**

All deviations, substitutions or exceptions to this Purchase Order must be approved by Purchaser in

writing. If a specific Product, or its equal, is specified in the Purchase Order, the proposed equal must be approved by Purchaser in writing. Seller shall not use any materials manufactured or produced in a country other than the United States without prior approval in writing by Purchaser.

**XIX. ENTIRE AGREEMENT:**

This Purchase Order sets forth the entire agreement between Purchaser and Seller and no terms, conditions, understanding or agreements purporting to modify or vary the terms of this Purchase Order shall be binding unless made in writing and signed by Purchaser and Seller. Additions, modifications or changes in the Specifications shall not be considered changes to the terms of the Purchase Order and are not subject to the restrictions in the paragraph.

**XX. COMPLIANCE AND MISCELLANEOUS PROVISIONS:**

Seller agrees to observe and comply with all applicable federal, state, municipal and local laws, orders and regulations, including, but not limited to, those affecting the design, manufacture, testing, safety, use and service of the Product. Seller further guarantees that the Product will comply fully with all applicable state and federal safety and health statutes and regulations, including without limitation the applicable provisions of the Occupational Safety and Health Act of 1990 and Federal Health and Safety Act, both as amended, and the regulations thereunder, to the extent applicable. Seller hereby agrees to indemnify Purchaser and Owner from and against any and all claims, losses, or liabilities arising from the failure of the Product to comply therewith. Seller further guarantees that the Product will be produced in conformity with all applicable requirements of the Fair Labor Standards Act and regulations and orders of the United States Department of Labor issued pursuant thereto; and Seller's invoice shall contain the following written assurance of compliance: "We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6,7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof."

**XXI. GOVERNING LAW:**

The validity, interpretation and performance of this contract shall be governed by and construed in accordance with the laws of the State of California. Seller shall immediately notify Purchaser if Seller has reason to believe any part of this contract may not comply with an applicable law, code or regulation. The remedies of Seller set forth herein are exclusive, and the total liability of Purchaser with respect to this Purchase Order and services furnished hereunder in connection with the performance or breach hereof, whether based on contract, warranty, or statute, shall not exceed the purchase price of the Product upon which such liability is based. Purchaser shall in no event be liable to Seller, any successors in interest, or any beneficiary or assignee of this Purchase Order for any consequential, incidental, indirect, special or punitive damages based on this Purchase Order or any breach hereof.