

APPERTURE SOLUTIONS TERMS AND CONDITIONS OF PURCHASE

These terms and conditions, together with any purchase order to which they are physically or electronically attached or in which they are incorporated by reference plus any supplemental flow-down provisions required by Owners and provided to Seller, are the "Agreement". Apperture Solutions or its affiliate identified on the Order, is "Buyer". "Seller" is the entity to which the Order is issued (as identified thereon). Seller and Buyer are each a "Party" and collectively "Parties". Seller shall supply any products, materials or other goods identified on the Order (the "Goods") and any services identified on the Order (the "Services"). The purchase order shall control if there is any conflict with these terms and conditions. The Order is accepted by Seller when it begins providing the Goods or Services, unless accepted earlier.

1. CHANGES: No substitutions shall be made in this Agreement without the prior written consent of Buyer. Buyer shall have the right by written direction to make changes in the specification and drawings for goods or services covered by this Agreement. If Seller believes that such change affects the price or delivery date for such goods or services, Seller shall so notify Buyer in writing (with adequate supporting documentation) within five (5) working days after receipt of said written direction. Seller shall suspend performance of the change unless thereafter released in writing by Buyer to perform said change and Buyer and Seller shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change. Seller's request for any adjustments shall be deemed waived unless submitted in writing within such five (5) working days after Seller receives direction to make such changes. Seller shall not suspend performance of the unaffected portion of this Agreement while Buyer and Seller are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by Buyer. If released in writing by Buyer, Seller shall comply with and perform such change in accordance with the terms of this Agreement during the time Seller and Buyer require to mutually agree upon an equitable adjustment. No agreement or understanding modifying the conditions of terms of this Agreement shall be binding upon Buyer nor will extra compensation be paid by Buyer unless the agreement or understanding is made in writing.

2. PRICE: The price of the Merchandise shall be as agreed to by the parties and confirmed by Buyer, unless otherwise agreed in writing by Buyer, shall be inclusive of all other charges, including foreign, federal, state and local taxes (except sales taxes Buyer is required to pay by applicable law), custom duties, import duties, cost of packaging, delivery and insurance. Unless otherwise stated in the documents, all sums due under the document shall be paid in the currency of the United States dollars.

3. ASSIGNMENT: The terms and conditions of this order shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns; provided, however, Contractor shall not assign this order nor subcontract the whole order or a substantial part thereof without the express written consent of Buyer. Buyer reserves the right to assign this Order to the Owner or Owner's successors or assigns. No assignment or subcontracting of any portion of the Work to be performed hereunder will relieve Contractor of its obligation under this Order.

4. CONFIDENTIAL INFORMATION: The Documents and all other information designated as confidential or proprietary including the order itself and contents thereof are referred to as "information". Seller agrees to retain the information in confidence and not disclose it to any third party except as authorized by Buyer for the performance of this Order. Seller shall not publicize the existence or scope of this Order without Buyer's written consent. Seller shall require these same agreements on the part of any sub-supplier to whom the information is disclosed.

5. DELIVERY: The date or dates for delivery of the Merchandise are as agreed to by the parties and confirmed by the Buyer. Unless otherwise specified in the document title and risk of loss shall pass to Buyer after delivery of Merchandise to Buyer at the specified delivery point. Time is of the essence in the performance of this contract. Seller shall deliver the Goods and Services on the delivery dates in the Order. Buyer may cancel the Order if delivery is not on time. Seller agrees that it shall at its expense, exert every possible effort necessary to meet delivery dates for any deliverable items specified under this ORDER. Seller agrees to notify Buyer immediately if, at any time, it appears that the delivery schedule set forth herein may not be met. Such notifications shall include the reasons for any possible delays, steps being taken to remedy any such problems, and a proposed revised delivery date. Further, this notification shall be in addition to any reporting requirements specified elsewhere in this Order. The requirement for notification set forth above is not to be construed as a waiver of the delivery schedule set forth in this Order and shall not prejudice Buyer's rights under any other clause of this contract or at law. In the event Seller does not deliver acceptable items in accordance with the delivery schedules set forth herein, Seller shall be liable to Buyer for all damages and liability of Buyer resulting therefrom. Seller shall be liable for any loss or damage to, and shall procure such insurance as may be reasonable under the circumstances covering, the Merchandise and property held on the Buyers behalf, and any other risk to Buyer from Sellers performance of the contract. Seller shall provide Buyer with certificates evidencing such insurance as outlined in the, "Insurance" section. Partial shipments must be accompanied by identifying documents, but such shipments shall not be construed as making the obligations of Seller severable. No change will be allowed for packing, shipment or handling unless stated in this Order. Seller shall pay for damaged goods resulting from improper packing. Itemized packing lists must accompany each delivery.

6. DELAYS: Where a delay in delivery is caused by acts of God, acts of civil or military authority, epidemics, war, riot, or other similar causes beyond Seller's control and which Seller could not have reasonably foreseen or provided against, Buyer shall have the right to either: (i) terminate by written notice to Seller all or part of this Agreement in accordance with its terms or (ii) extend the date of delivery or performance for a period equal to the durations of the delay, but Seller shall not be entitled to any extra compensation for such delay. Seller shall not be excused from performance hereunder where alternate sources of supply of materials, goods or services are available.

7. SHIPMENT: If the price for the Goods specifies it includes the cost of shipment, Seller can ship the Goods per its normal mode of delivery. If the price for the Goods does not specify that it includes the cost of shipment, Seller shall ship the Goods as directed or otherwise approved by Buyer.

8. INVOICE AND PAYMENT: After delivery of the Goods or the end of each month for Services, Seller shall submit an invoice to the address specified in the Order for the fees, taxes and, if reimbursable, expenses applicable to the Goods delivered and Services provided. Seller's invoice shall be accompanied by such records as Buyer deems adequate to verify the amounts billed and shall be in the form required by Buyer. Incomplete or incorrect invoices will not be processed or paid. All expenses, charges and costs are included in the fees and will not be reimbursed. Buyer shall pay Seller (via electronic funds transfer, wire or check, as Buyer elects) within 60 days after receipt of a properly prepared and correct invoice.

9. TAXES: Each Party shall bear and remit any sales, use, value added, goods and services, transfer or similar taxes imposed upon it by the taxing authority. Where imposed upon Seller, without recovery from Buyer, Seller shall bear those Taxes. Where imposed upon Buyer, Seller shall itemize those taxes on each invoice (unless Buyer provides an exemption certificate or direct pay permit). Buyer shall withhold income or other taxes from payments to Seller to the extent required by the taxing authority; Buyer shall not be required to "gross up" or increase any payment to Seller for such taxes. Buyer shall not be responsible for any other taxes.

10. CANCELLATION FOR DEFAULT: In the event Seller shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or if a receiver shall be appointed on account of Seller's insolvency, or in the event Seller is in default of any material provisions or requirement of this Agreement, Buyer may, by written notice to Seller, without prejudice to any other rights or remedies which Buyer may have, cancel further performance by Seller under this Agreement, in whole or in part. In the event of such cancellation, Buyer may complete the performance of the terminated portions of this Agreement by such means as Buyer selects, and Seller shall be responsible for any additional costs incurred by Buyer in so doing. Seller shall deliver or assign to Buyer any work in progress as Buyer may request. Any amounts due Seller for goods and services completed by Seller in full compliance with the terms of this Agreement prior to such cancellation, as verified by Buyer, shall be subject to set off of Buyer's additional costs of completing the Agreement and other damages incurred by Buyer as a result of Seller's default. Waiver by Buyer of any default of Seller shall not be considered to be a waiver by Buyer of any provision of this Agreement or of any subsequent default by Seller. If Seller's contract is terminated by virtue of default, and it is later determined by the final judgment or order of a court of competent jurisdiction, arbitration entity or administrative proceeding of any type whatsoever that the Seller was not in default, the parties agree that the termination shall then be considered a termination for convenience.

11. TERMINATION FOR CONVENIENCE: Buyer shall have the right to terminate for its convenience further performance of all or any separable part of this Agreement at any time by written notice to Seller. On the date of such termination stated in the notice, Seller shall discontinue all work pertaining to this Agreement, shall place no additional orders, and shall preserve and protect materials on hand purchased for or committed to this Agreement, work in progress, and completed work both in Seller's and in its supplier's plants pending Buyer's instructions, and shall dispose of same in accordance with Buyer's instructions. Termination payment to Seller or refund to Buyer, if any, shall be promptly and mutually agreed to by Buyer and Seller, based on that portion of the work satisfactorily performed to the date of cancellation, including reimbursement for actual costs, reasonable overhead and profit on such work, plus reasonable and necessary expenses resulting from the termination, disposition of work and material on hand, and amounts previously paid by Buyer, all as substantiated by documentation satisfactory to and verified by Buyer. Seller shall not be entitled to any loss of prospective profits, contribution to overhead or incidental, consequential or other damages because of such termination. Seller shall deliver or assign all goods with all applicable warranties or dispose of goods as directed by Buyer prior to final payment.

12. LIENS: Seller agrees to indemnify, hold harmless and defend Buyer and Owner from and against all laborers', materialmen's, mechanics', or other liens arising from the performance of Seller's obligations under this Agreement and shall keep the premises of Owner free from all such claims, liens, and encumbrances. To the full extent permitted by applicable law, Seller, for itself and all of its suppliers of any tier, waives all rights of lien against the property and premises of Owner for labor performed or for goods furnished for the Work.

13. SUSPENSION FOR PERFORMANCE: Buyer may at any time, and from time to time, by written notice to Seller, suspend further performance of all or any portion of this Agreement by Seller. Such suspensions shall not exceed more than one hundred eighty (180) consecutive calendar days each nor in the aggregate more than two hundred seventy (270) calendar days. Upon receiving any such notice of suspension, Seller shall promptly suspend further performance of the Agreement to the extent specified, and during the period of such suspension shall properly care for and protect all work in progress and materials, supplies, and equipment Seller has on hand for performance of the Agreement. Seller shall use its best efforts to utilize its material, labor and equipment in such a manner as to mitigate costs associated with suspension. Buyer may at any time withdraw the suspension as to all or part of the suspended performance by written notice to Seller specifying the effective date and scope of withdrawal and Seller shall, on the specified date of withdrawal, resume diligent performance of the work for which the suspension is withdrawn. If Seller believes that any such suspension or withdrawal of suspension justifies modification of the Agreement price or time for performance, Seller shall comply with the provisions set forth in Article 1, entitled "CHANGES". In no event shall Seller be entitled to any loss of prospective profits, contributions to overhead or any incidental, consequential or other damages because of such suspensions or withdrawals of suspension.

14. INDEPENDENT CONTRACTOR: Seller shall act as an independent contractor and not as an agent or employee of Buyer or Owner and shall not subcontract any portion of the work without the written consent of Buyer.

15. LAWS AND REGULATIONS: Seller warrants that all goods and services supplied pursuant to this Agreement will comply with all applicable laws, ordinances and regulations, and further Seller shall provide all permits, certificates and licenses which may be required for the performance of the Agreement. Seller further warrants that all goods furnished by Seller in performance of this Agreement will comply fully with the Occupational Safety and Health Act of 1970 (84 U.S. Stat 1590), as amended and the State plans approved under such Act, and the regulations there under, to the extent applicable to such equipment, and in addition to any other rights or remedies which Buyer may have, Seller shall indemnify, defend and hold harmless Buyer and its Owner from and against any and all claims, loss, or liability arising from failure of such goods to comply therewith. Seller certifies that it has an affirmative action policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; that it maintains no employee facilities segregated on the basis of race, color, religion or national origin. Seller hereby certifies that the goods and services provided hereunder shall be produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938, as amended, and the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof, and that each invoice submitted hereunder shall be correct and authentic and the only one issued for the goods and services mentioned.

16. WARRANTY: Seller represents and warrants that: (a) it is transferring good title to the Goods (free and clear of any claims, liens or encumbrances), it has sufficient right, title and interest to assign the ownership rights and grant the licenses hereunder and the Goods and Services (and process for making the Goods and use of the Services) do not infringe the proprietary rights of a third party; (b) the Goods and Services shall meet the specifications and descriptions in the Order; (c) the Goods shall be commercially similar to previous goods, be free of contaminants and be of merchantable quality; (d) Goods that are equipment (including parts) shall be new, be free of defects in materials, workmanship and design and be fit for the particular use; and (e) the Services shall be performed in a good, prompt and professional manner by qualified and/or certified personnel in accordance with the Order and consistent with best practices. Goods that are equipment (including parts) shall conform to the warranties in clauses (b), (c) and (d) for 24 months from date of installation or start up, or 30 months from date of shipment, whichever comes last. At Buyer's option and as applicable, Seller shall promptly repair non-conforming equipment, replace non-conforming Goods, re-perform non-conforming Services, refund the purchase price of non-conforming Goods or Services or reimburse Buyer's repair costs for non-conforming equipment. These warranties shall extend to Buyer, Owner, their successors and assigns. Goods or services that are repaired or replaced by Seller pursuant to this Warranty shall be warranted, according to the terms hereof, for an additional twelve (12) months from the date of such repair or replacement. Seller will at any time be chargeable for repairs made by Buyer to correct such a failure to meet the warranty herein when Seller has been given notice of such failure and thereafter has failed to take prompt and effective action to correct the failure in accordance with the foregoing.

17. INSURANCE: Unless higher limits are required by Owners through flow-down provisions, Seller shall maintain insurance with minimum limits as follows:

- (a) Worker's compensation coverage as required by law, and employer's liability insurance with a limit of \$1,000,000;
 - (b) Commercial general liability insurance with a limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
 - (c) Business automobile insurance with a limit of \$1,000,000; and
 - (d) Excess liability coverage with an annual limit of \$3,000,000.
- (e) If providing engineering or design services, Seller shall maintain professional liability insurance with a limit of \$2,000,000.

Insurance is to be maintained on an occurrence basis and placed with insurers rated "A- VII" or better by A.M. Best's rating service. Buyer, Owner, Buyer's agent, and their subsidiaries and affiliates shall be additional insured on a primary and non-contributory basis with respect to all Seller liability policies. All Seller insurance policies shall include a waiver of subrogation in favor of Buyer, Owner, Buyer's agent, and their subsidiaries and affiliates. Before beginning work, Seller shall furnish Buyer with insurance certificates evidencing that Seller has complied with the foregoing insurance requirements. Seller shall provide written notice by certified mail to Buyer at least thirty (30) days prior to termination, cancellation, non-renewal, or reduction of coverage in the policy. In no event will the coverage or limits of any insurance maintained by Seller under this Agreement, or the lack or unavailability of any other insurance, limit or diminish in any way Seller's obligations or liability to Buyer under this Agreement.

18. INDEMNITY: Each Party ("Indemnitor") shall, to the extent permitted by law, indemnify, defend and hold safe and harmless the other party from and against any and all claims, demands, complaints or actions by third parties (including employees of the Parties, their subcontractors under the Agreement, or government agencies) arising from or relating to the Agreement (including personal injury, death, property damage or damage to the environment), to the extent arising out of the negligence, willful misconduct, breach of the Agreement, breach of a related agreement, or violation of law by the Indemnitor or any subcontractor of the Indemnitor ("Fault or Negligence"). Further, in the event the Parties are jointly at fault or negligent, they agree to indemnify each other in proportion to their relative Fault or Negligence. The claims, demands, complaints and actions covered hereunder include all settlements, losses, liabilities, judgments, court costs, reasonable attorneys' fees, fines, penalties and other litigation costs and expenses arising from or related to such claims, demands, complaints or actions.

19. SEVERABILITY: Should any term, covenant, condition or provision of this Agreement be held to be invalid or unenforceable, the balance of this Agreement shall remain in full force and shall stand as if the unenforceable provision did not exist.

20. WAIVER: Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any subsequent breach, nor affect the binding nature of this Agreement nor any part thereof, nor prejudice either party as regards to any subsequent action.

21. GENERAL PROVISIONS: (a) There are no understandings, agreements or representations, express or implied, not specified in the Agreement. (b) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two (2) years after the cause of action has accrued. (c) Any modification of these terms and conditions must be set forth in a written instrument signed by a duly authorized representative of Buyer. (d) The Agreement is formed and shall be construed, performed and enforced under the laws of the State of North Carolina.

22. INTELLECTUAL PROPERTY: Seller shall defend any suits brought against Buyer based on a claim that use of the Goods delivered by Seller or use of Software provided by Seller constitutes an infringement of a valid patent of the United States, and shall pay any damages awarded therein against Buyer, provided that Buyer: promptly notifies Seller in writing of the filing of such suit or the threat thereof; permits Seller to control completely the defense or compromise of such claim of infringement; and provides all reasonable assistance and cooperation requested by Seller for the defense of such suit. In the event that only the Goods delivered by Seller are held to be infringing in such suit and their use is enjoined, Seller shall, at Seller's option and expense, procure for Buyer the right to continue using the Goods, replace them with a non-infringing product or modify them so they become non-infringing. Buyer agrees that Seller shall not be liable for infringement, and that Buyer shall fully indemnify Seller therefore, if infringement is based upon the use of Goods in connection with goods not delivered by Seller or in a manner for which the Goods were not designed by Seller or if the Goods were not designed by Seller or if the Goods were designed by Buyer or were modified by or for Buyer in a manner to cause them to become infringing.

23. SAFETY Seller shall comply with all Access and Environmental Health and Safety Policies at Owner's sites at which Seller is engaged by Buyer and shall, if asked by Buyer, provide evidence that it has a passing safety grade with ISNet World at other customer sites.