

PURCHASE ORDER TERMS AND CONDITIONS – for the Purchase of Services & Related Goods

- 1. Applicability.** These Purchase Order Terms and Conditions (“Terms”) apply to and are made part of the Purchase Order for Services & Related Goods (“Services”) which is issued by Kent Corporation or one of its wholly-owned subsidiaries identified as Buyer on the Purchase Order form (“P.O. Form”). The P.O. Form and these Terms may collectively be referred to as the “Order”. Capitalized terms used but not defined in these Terms shall have the same meaning ascribed to such terms in the P.O. Form. In the event of a conflict or ambiguity between the P.O. Form and these Terms, the provisions of the P.O. Form shall prevail. Except as expressly provided herein, the Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. Only a written agreement, such as a Master Contract, Statement of Work, Site Specific General Conditions or Supplier Indemnity Agreement, signed by authorized representatives of Buyer and Vendor shall override and supersede any specific conflicting Terms herein or any other aspect of the Order that is inconsistent with the terms of said written signed agreement.
- 2. Acceptance.** This Order is an offer by Buyer to purchase the Services from Vendor. The Order is binding unless Vendor rejects the Order in writing within 1 day of the Order Date, not including weekends and U.S. holidays. Buyer may withdraw the Order at any time before it is accepted by Vendor.
- 3. Materials and Workmanship.** Any work comprising the Services (“Work”), materials and equipment shall conform strictly to the governing agreement. Unless otherwise expressly stated, all materials and equipment shall be new, undamaged, and of best quality. All workmanship shall be of best quality. All materials, equipment, and workmanship shall conform to good standard trade practices and the generally accepted national, state, and local codes. Equipment and buildings set or erected shall be in strict accord with the manufacturer's recommended standard practices.
- A.** Equal to Specifications: The P.O. may detail an item of material or equipment by a specific manufacturer's name and type, followed by the words "or equal". Material or equipment of another manufacturer, which is equal in quality and performance, may be substituted with the prior written approval of the Buyer. Such approval will be granted only if the Buyer is satisfied that the material or equipment proposed by the Vendor is in fact equal to that specified.
- B.** Rejection by the Buyer of any or all parts of Work not conforming to the P.O. shall be promptly corrected or replaced by the Vendor at the Vendor's expense. Failure to correct or replace such rejected Work promptly after receipt of written notice from Buyer constitutes default of contract provisions. The Buyer may assign others to remove and replace the rejected work. The Vendor shall reimburse Buyer for the costs of such work done by others.
- 4. Change Orders.** Buyer may at any time, by written instructions and/or drawings issued to Vendor (each a “Change Order”), order changes to the Services. Vendor shall within ____ days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Vendor shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Order. Vendor acknowledges that a Change Order may or may not entitle Vendor to an adjustment in the Vendor's compensation or the performance deadlines under this Order.
- 5. Price. Unless otherwise specified in the Order.** The Total Price includes all taxes, duties, assessments, fees, or other charges. No increase in the Total Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.
- 6. Payment Terms.** Except as otherwise provided for in an overriding agreement Vendor shall issue Invoices to Buyer and Buyer shall pay all properly invoiced amounts due to Vendor according to the terms on the P.O. Form, except for any amounts disputed by Buyer in good faith.
- 7. Warranties.** The Vendor warrants that the Work and all workmanship, materials, and equipment supplied by the Vendor shall be free of any defect or fault and shall comply fully with the P.O. for a period of one year, or for the period stated elsewhere in an overriding agreement, whichever is greater. This warranty period shall commence upon final acceptance of the Work by Buyer. Within 24 hours after Buyer gives the Vendor written notice of any such defects or fault or any failure to comply with the Order, the Vendor shall initiate action to remedy the same in a manner satisfactory to Buyer and without expense to Buyer. The Vendor shall pay for all expenses and damages resulting therefrom. If the Vendor fails to provide remedy as described, Buyer may otherwise repair defects as needed and the Vendor shall promptly reimburse Buyer for all costs and expenses in connection therewith. 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 with the foregoing warranties.
- 8. General Indemnification.** Vendor shall defend, indemnify and hold harmless Buyer, Buyer's parent company, its subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders and employees and Buyer's customers (collectively, “Indemnitees”) against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, “Losses”) arising out of or occurring in connection with the Services purchased from Vendor or Vendor's negligence, willful misconduct or breach of the Terms. Vendor shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.
- 9. Intellectual Property Indemnification.** Vendor shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of any Deliverables infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Vendor enter into any settlement without Buyer's or Indemnitee's prior written consent.
- 10. Intellectual Property.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, “Intellectual Property Rights”) in and to all documents, work product and other materials that are delivered to Buyer under the Order or prepared by or on behalf of the Vendor in the course of performing the Services (collectively, the “Deliverables”) shall be owned exclusively by Buyer. Vendor agrees, and shall cause its employees and Permitted Subcontractors (collectively, “Vendor Personnel”) to agree, that with respect to any Deliverables that may qualify as “work made for hire” as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a “work made for hire” for Buyer. To the extent that any of the Deliverables do not constitute a “work made for hire,” Vendor hereby irrevocably assigns, and shall cause the Vendor Personnel to irrevocably assign to Buyer, in each case without additional consideration, all right, title and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. The Vendor shall cause Vendor Personnel to irrevocably waive, to the extent permitted by applicable law, any and all claims such Vendor Personnel may now or hereafter have in any jurisdiction to so-called “moral rights” or rights of droit moral with respect to the Deliverables. Upon Buyer's request, Vendor shall, and shall cause Vendor Personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist Buyer to prosecute, register, perfect or record its rights in or to any Deliverables.
- 11. Insurance.** Vendor shall maintain the following insurance with an insurance company or companies admitted to do business under the law of the State in which the Work is to be done or materials furnished:



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a) Workmen's Compensation Insurance covering its obligations under the applicable law or laws, with the state or states involved specifically scheduled under Item 3 or 3A of the Workers' Compensation policy, and Employer's Liability of \$100,000; b) Comprehensive General Liability Insurance including waiver of the Explosion, Collapse, and Underground exclusions and Broad Form Property Damage for work classes to be performed under this Order, Independent Contractors Coverage, Products-Completed, Operations Coverage, and Contractual Liability coverage for the indemnity agreements set out above; c) Comprehensive Automobile Liability Insurance covering all owned, hired, and non-owned auto-mobile risks. The minimum liability limits for Bodily Injury and Property Damage shall be \$1,000,000 per occurrence for both Comprehensive General Liability and Automobile Liability. The liability insurance limits shall in no way be construed as a limit on the Buyer's right of indemnity hereunder and the Buyer reserves the right to request higher limits of liability. Certificates of said Insurance shall be filed with Buyer and shall provide for 30 days' written notice prior to cancellation or material change in said insurance.

12. Compliance with Law. Vendor is in compliance with and shall comply with all applicable laws, regulations and ordinances. Vendor 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. To the extent applicable, Vendor shall comply with all export and import laws of all countries involved in the sale of Goods under this Order. Vendor assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate this Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods. Vendor shall comply with all rules, regulations and policies of the Buyer, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Buyer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

13. Recordkeeping. Vendor shall maintain complete and accurate records relating to the provision of the Services under this Order, including records of the time spent and materials used by the Vendor in providing the Services in such form as Buyer shall approve. During the term of this Order, and for a period of 3 years thereafter, upon Buyer's written request, Vendor shall allow Buyer to inspect and make copies of such records and interview Vendor personnel in connection with the provision of the services.

14. Termination. Buyer may terminate the Order, in whole or in part, at any time with or without cause for undelivered or uncompleted Services on 60 days' prior written notice to Vendor. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Order with immediate effect upon written notice to Vendor, either before or after the acceptance of the Services, if Vendor has not performed or complied with any of these Terms, in whole or in part. If Vendor becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then Buyer may terminate this Order upon written notice to Vendor. If Buyer terminates the Order for any reason, Vendor's sole and exclusive remedy is payment for the Services received and accepted by Buyer prior to the termination.

15. Limitation on Liability. Nothing in this Order shall exclude or limit (a) Vendor's liability under Sections 9, 10, 11 and 17 hereof, or (b) Vendor's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

16. Waiver. The remedies herein reserved shall be cumulative, and in addition to any other or further remedies provided in law or equity. No waiver of a breach of any provision of this Order shall constitute a waiver of any other breach, or of such provisions.

17. Confidential Information. All non-public, confidential or proprietary information of Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents,

data, business operations, formulas, recipes, processes, Buyer lists, pricing, discounts or rebates, disclosed by Buyer to Vendor, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Vendor shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to Vendor at the time of disclosure; or (c) rightfully obtained by Vendor on a non-confidential basis from a third party.

18. Force Majeure. Buyer reserves the right to cancel all or any part of this order, which has not actually been shipped by Vendor, in the event Buyer's business is interrupted because of strikes, labor disturbances, lockout, riot, fire, act of God, terrorism, or any other causes, whether like or unlike the foregoing, that are beyond the reasonable efforts of Buyer to control.

19. Time of the Essence. Vendor acknowledges that time is of the essence with respect to Vendor's obligations hereunder and that prompt and timely performance of all such obligations is strictly required.

20. Assignment. Vendor shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Buyer.

21. Relationship of the Parties. The relationship of between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties and neither party shall have the authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

22. Responsible Business Practices. In performing its obligations under the P.O., Vendor shall abide by Buyer's Responsible Business Practices Statement found at: <http://kentww.com/supplychain/services.pdf>

23. Governing Law. The provisions of this Order shall be governed by the laws of the State of Iowa, United States of America, and shall be construed in accordance with the Uniform Commercial Code as enacted in the State of Iowa, as applicable.

24. Notices. All notices shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing.

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

26. Survival. Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Warranties, General Indemnification, Intellectual Property Indemnification, Insurance, Compliance with Laws, Confidentiality, Governing Law and Survival.

27. Amendment and Modification. No change to this Order is binding upon Buyer unless it is in writing and specifically states that it amends this Order and is signed by an authorized representative of Buyer.