

## STANDARD P.O. TERMS AND CONDITIONS

**1. Acceptance-Agreement** Supplier's commencement of work or shipment of goods, whichever occurs first, constitutes acceptance of this purchase order and all its terms and conditions. SAGEBRUSH Technology, Inc. hereby objects to any terms proposed in Supplier's acceptance or acknowledgement of SAGEBRUSH's offer which add to, vary from, or conflict with the terms of this order. Any such proposed terms shall not operate as a rejection of this offer but are deemed a material alteration, and this offer shall be deemed accepted by the Supplier without said additional or different terms. If Supplier shall deem this purchase order an acceptance of a prior offer, such acceptance is expressly limited to the terms contained on this order.

**2. Assignment** Supplier may not assign or transfer this Agreement or any rights herein, in whole or part, including the obligation of Supplier to directly perform the work herein through its employees, without the prior written consent of SAGEBRUSH. Supplier shall not subcontract or delegate the services to be performed under this Agreement to another party without the prior written consent of SAGEBRUSH.

**3. Confidential Proprietary Information** Any information or data furnished by SAGEBRUSH to Supplier under this order in the form of specifications, drawings, reprints, technical information, equipment, prototypes, forecasts, schedules, or other technical or business information shall be deemed SAGEBRUSH Confidential Proprietary Information, shall remain SAGEBRUSH's property, shall be kept confidential, and shall be promptly returned to SAGEBRUSH at SAGEBRUSH's request. Supplier shall not disclose, without SAGEBRUSH's written permission, any such information or data to any other person, or use such information or data for any purpose other than performing this order. The obligations under this paragraph shall survive cancellation, termination, or completion of this order. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Supplier to SAGEBRUSH shall be deemed secret or confidential.

**4. Conflicts of Interest** Supplier represents that its execution and performance of this Agreement does not conflict with or breach any contractual, fiduciary or other duty or obligation to which Supplier is bound. Supplier further represents that it will not accept work during the term of this Agreement which would create an organizational conflict of interest ("OCI"). Supplier shall immediately provide notice to SAGEBRUSH in the event that it discovers any potential, actual or apparent personal or organizational conflict of interest related to or arising from this Agreement. Failure to disclose and adequately avoid or mitigate any OCI shall entitle SAGEBRUSH to immediately terminate the affected Order.

**5. Construction of Agreement** Supplier acknowledges that it has read and requested any and all modifications to this Agreement that are needed to express the intent of the parties. Accordingly, the rule of contra preferendum shall not apply to this Agreement and Supplier agrees and acknowledges that any ambiguity, inconsistency or conflict that remains in the Agreement after its execution by both parties shall not be construed for or against either party.

**6. Dispute Resolution** Both parties agree that any claims or disputes, except for claims or disputes relating to intellectual property, will be submitted to non-binding mediation prior to initiation of any formal legal process. Costs of mediation will be shared equally.

**7. Force Majeure** This Agreement will terminate without liability to either party if substantial performance of either party's obligations is prevented by an unforeseeable cause reasonably beyond that party's control. Such causes include, but are not limited to, acts of God, regulations, or orders of governmental authorities, fire, flood or explosion, war, disaster, civil disorder, curtailment of transportation facilities, or other emergency making it illegal or otherwise impossible to provide the deliverable goods or services.

**8. General** This purchase order and any documents attached to or referred to on this order constitute the entire agreement between the parties and can only be modified in writing signed by authorized representatives of both parties. All claims for money due from SAGEBRUSH shall be subject to deduction or set off by SAGEBRUSH for any counterclaim arising out of this or any other transaction with Supplier. SAGEBRUSH's failure to enforce or insist on performance of any of the terms or conditions in this order shall not operate as a waiver of that or any other right.

**9. Governing Law** This agreement/contract/order shall be governed by and construed according to the law of Federal Government Contracts. To the extent that Federal Government Contract Law does not resolve a particular

issue, the laws of the State of New Mexico shall apply, exclusive of that body of laws known as conflicts of law.

**10. Government Subcontract** If a government contract number appears on the face of this order, Supplier agrees to comply with all terms and conditions of that government contract and made a part of any other pertinent laws, Presidential directives and executive orders to the extent that they apply to the subject matter of this order.

**11. Import/Customs** For each shipment where the Supplier sources goods covered by this order outside the United States Customs Territory, SAGEBRUSH shall have the option of being the Importer of Record. In such case, the Supplier shall furnish SAGEBRUSH with a commercial invoice containing the following information: (1) port of entry; (2) names of Supplier and SAGEBRUSH entity purchasing the merchandise; (3) name of shipper (if different from Supplier); (4) country of export; (5) detailed description of merchandise; (6) quantities and weights; (7) actual purchase price, including all elements of the amount paid or payable by SAGEBRUSH; (8) the currency in which the sale was made; (9) all charges, costs and expenses associated with the merchandise, including freight, insurance, commission, containerization and packing, unless the cost of packing, containerization and inland freight are already included in the invoice price; (10) all rebates or discounts; (11) the country of origin (manufacture) of the goods; and (12) all goods or services furnished for the production of the merchandise (e.g., "assists") not included in the invoice price for the first shipment of goods destined for the United States Custom Territory unless SAGEBRUSH directs otherwise in writing. The Supplier agrees to comply with all laws and regulations governing the importation of goods into the U.S. Custom Territory.

**12. Indemnification** The employees of each party shall obey all pertinent rules, regulations and laws while on the premises of the other party. Each party agrees to defend, indemnify and hold harmless the other party from and against any and all claims for: (a) damage to, or the loss of use of, the other party's personal property; and (b) injury or death caused by any act or omission of the indemnifying party's employees, consultants or agents in connection with performance of this Agreement. This indemnification shall survive the termination of this Agreement. This indemnification shall be in addition to all other obligations of Supplier under this order to include liabilities, losses, damages, costs, credits, penalties or charges, including reasonable attorneys fees, suffered or incurred by SAGEBRUSH as a result of (i) any claims, suits, proceedings, audits, investigations, or other actions brought against SAGEBRUSH, its agents, employees, representatives, or Suppliers arising out of or related to the performance of Supplier, its agents, employees, representatives, or Suppliers under or certifications made pursuant to this Agreement; or (ii) any failure by Supplier to comply fully with any laws and regulations, whether or not the same are specifically referenced in this Agreement.

**13. Insignia** If any Products are rightfully rejected or not purchased by SAGEBRUSH, which utilize SAGEBRUSH's name, trademarks, trade names, insignia, symbols, or decorative designs, Supplier shall remove same prior to any sale, use or disposition thereof.

**14. Intellectual Property Indemnity** By acceptance of this order, Supplier agrees to indemnify SAGEBRUSH against all claims, judgments, decrees, costs and expenses, and attorney's fees incident to any proceeding which may be brought against SAGEBRUSH or its agents, distributors, customers, or other vendors based on its claim of alleged copyright, trademark, mask work right, intellectual property or patent infringement, as well as for an alleged claim of unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished under this order, unless the goods or services are of SAGEBRUSH design or formula, and Supplier agrees that it will, upon request of SAGEBRUSH and at Supplier's own expense, defend or assist in the defense of any action which may be brought against SAGEBRUSH or its agents, distributors, customers, or other vendors for such infringement or claimed infringement or alleged claim of unfair competition. SAGEBRUSH agrees to notify Supplier promptly upon notice of infringement or information of such a suit having been filed.

**15. Inspection** Supplier's facilities, equipment, goods and services purchased under this order are subject to SAGEBRUSH's inspection and acceptance. Payment for the goods and services delivered shall not constitute acceptance. Goods and services shall only be deemed accepted when they have actually been counted, inspected, and tested by SAGEBRUSH and found to be in conformance with this order. Goods rejected and/or goods supplied in excess of those ordered or delivered in advance of the delivery schedule may, in addition to SAGEBRUSH's other

rights, be returned to Supplier at its expense, including all expenses of unpacking, examining, repacking and reshipping such goods. If SAGEBRUSH receives goods or services with defects or nonconformities whether or not apparent on inspection, SAGEBRUSH reserves the right to require a refund or replacement as well as transportation costs and payment of damages. Nothing contained in this purchase order shall relieve Supplier from the obligations of testing, inspection and quality control. NOTE: The U. S. Government reserves the right to perform quality assurance surveys and verification inspections at vendor and supplier locations where products, materials or services destined for Government use are rendered under a contractor's purchase order. This may include the review of inspection records by the Government or SAGEBRUSH.

**16. Licenses** Supplier shall obtain and maintain in force during the period of any Subcontract, all licenses, agreements and authorizations necessary or appropriate to enable performance of Supplier's duties hereunder. If said permits, licenses, agreement and authorizations expire, terminate, are cancelled or are withdrawn, SAGEBRUSH may terminate this agreement in accordance with Article

**17. Limitation of Liability** In no event shall either party be liable to the other for any lost profits, lost savings, consequential, incidental, or special damages, even if advised of the possibility of such damages. Direct damages not limited by this clause include but are not limited to (I) any claim for procurement costs; (II) any claim for "offset" brought pursuant to the provisions of the federal acquisition regulations and (III) any claim for administrative or civil false claims remedies.

**18. Materials, Tools and Equipment** All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by SAGEBRUSH for the purpose of this order shall be and remain the sole property of SAGEBRUSH. Supplier shall safeguard all such property while it is in Supplier's custody or control, be liable for any loss or damage to such property, at SAGEBRUSH's option procure adequate insurance, use it only for SAGEBRUSH orders, and return it to SAGEBRUSH upon request. Any such property described above whether furnished or ordered by SAGEBRUSH and which may be in an unfinished state may be removed from Supplier's premises or the premises of Suppliers upon request without further action or bond. In the event that SAGEBRUSH removes such property that is not finished, SAGEBRUSH will pay Supplier a percentage of the order price that corresponds to the percentage of completion. Supplier agrees to waive and hereby does waive any lien it may have in regard to such property and ensure Suppliers do the same.

**19. Material Safety Data Sheets** Supplier shall provide a Material Safety Data Sheet (MSDS) for those chemicals purchased under the terms and conditions of this order which are regulated by OSHA's hazard communication regulations set forth in 29 C.F.R. 1910.1200. All chemical suppliers certify by acceptance of this order that the chemicals purchased are on the Toxic Substances Control Act, 15 U.S.C.S. § 2601, et. seq., chemical inventory or are subject to an exemption and that such exemption is specified in the MSDS.

**20. Notices** Any and all notices required or permitted under this Agreement shall be addressed in writing and shall be deemed effective when personally delivered, three (3) days after being sent by Certified U.S. Mail, postage pre-paid, Return Receipt Requested, when sent via electronic fax with confirmation of successful transmission, or when sent by a nationally recognized delivery service providing receipt of delivery.

**21. No Waiver** SAGEBRUSH's delay or failure to require performance by the Supplier of any term, condition or provision hereof shall not affect SAGEBRUSH's right to require such performance at any time thereafter; nor shall the waiver by SAGEBRUSH of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

**22. Packing, Delivery and Shipment** All goods shall be packed and shipped in accordance with instructions or specifications on this order. Absent any such instructions, Supplier shall comply with the best commercial practice to ensure safe arrival at destination at the lowest transportation cost. All deliveries dates are used a metric. If goods are not delivered or services provided by the date specified, SAGEBRUSH may terminate this order, without liability, as to items not yet shipped or services not yet rendered, by notice effective upon receipt by Supplier. In such instance, SAGEBRUSH may purchase substitute items or services elsewhere and charge Supplier with any loss incurred. If in order to comply with SAGEBRUSH's required delivery date it becomes necessary for Supplier to ship by a more expensive method than specified in this purchase order, Suppliers shall pay any increased transportation costs, unless the

necessity for such rerouting or expedited handling has been caused by SAGEBRUSH.

**23. Price** The Articles shipped or work performed against this order must not be invoiced at a higher price than shown on the face of this order without the written consent of SAGEBRUSH. The invoice must itemize transportation charges, including foreign inland freight and insurance and taxes separately, if applicable. If the price is omitted from the order, the price shall be the lowest prevailing market price. No charge will be allowed for packing, labeling, commissions, customs duties, storage, crating, or express handling unless indicated on this order.

**24. Publicity** Supplier is not authorized to make this Agreement known to any third party, through advertisement or otherwise, without the prior written consent of SAGEBRUSH.

**25. Relationship of the Parties** This Agreement does not establish a joint venture, partnership or any other formal business organization between the parties. Unless otherwise agreed, neither party may act as the agent of the other party for any purpose whatsoever. Each party shall pay all labor compensation and benefits due its respective employees relating to this Agreement and shall be responsible for all obligations respecting such employees relating to income tax, FICA and Medicare withholdings, unemployment taxes, pension and retirement plan contributions, and other similar responsibilities.

**26. Severability** If any provision of this Agreement is held invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement nevertheless will continue in full force and effect without being impaired or invalidated in any way.

**27. Termination** SAGEBRUSH may terminate all or any part of this order at any time for its convenience upon written notice to Supplier. SAGEBRUSH will pay a reasonable termination charge based on a percentage of the order price reflecting the percentage of work performed by Supplier prior to termination. Any claim for payment of such termination charges must be submitted in writing to SAGEBRUSH within thirty (30) days of receipt of written notice of termination. SAGEBRUSH shall have the right to audit all elements of any termination claim, and Supplier shall make available to SAGEBRUSH on request all related books, records and papers. Late deliveries, deliveries of products which are defective or which do not conform to this order, failure to perform as agreed, and failure to provide reasonable assurances of future performance upon request, shall all be reasons allowing SAGEBRUSH to terminate this order for cause. In such event Supplier shall be liable for any damages (or at SAGEBRUSH's option, specific performance) due to Supplier's breach or default. Neither party will be liable to the other for any delay or failure to perform if that delay or failure results from all unforeseeable cause beyond its reasonable control, except that SAGEBRUSH may terminate all or any portion of this order without liability to Supplier if such delay or failure to perform by Supplier or on behalf of Supplier extends beyond thirty (30) days of SAGEBRUSH's requested delivery date. SAGEBRUSH's total liability for damages under this order shall not exceed the price allocable to the goods or services giving rise to the claim.

**28. Warranties** Supplier expressly warrants that all goods or services provided under this order shall be merchantable, free from defects in material and workmanship, and shall conform to all applicable specifications and appropriate standards. If Supplier knows or has reason to know the particular purpose for which SAGEBRUSH intends to use the goods or services, Supplier warrants that such goods or services shall be fit for such particular purpose. Supplier further warrants that the goods are wholly new and contain new components and parts throughout and that Supplier has good and warrantable title to the goods free and clear of all liens. Supplier shall indemnify and hold SAGEBRUSH harmless for all damages arising out of any breach of these warranties. In addition to the warranties above, Supplier shall extend all warranties it receives from its vendors to SAGEBRUSH, and to SAGEBRUSH's customers one year from delivery, unless otherwise specified. Breach of the warranties in this provision, or any other term of this order, shall entitle SAGEBRUSH to all available remedies, including those of the Uniform Commercial Code.

**29. Work-In-Progress** Notwithstanding termination of this agreement, Supplier shall be liable for payment of all Special Products, work-in-progress for assemblies, completed assemblies, and other supplier fees plus a reasonable profit.