

# U.S. VENTURE, INC.

## VENDOR PURCHASE ORDER GENERAL TERMS & CONDITIONS

**COMPLETE AGREEMENT:** This Purchase Order is for the purchase, manufacture and/or delivery of the materials and/or services listed on the front side of this Purchase Order (“Products”); and this Purchase Order, including the Special Terms located on the front side hereof and these General Terms & Conditions, together with any change order(s), exception acknowledgement(s), or other documents signed by Buyer and Seller and incorporated by reference (collectively, “PO”) constitutes the sole and entire agreement between the parties hereto. No other terms or conditions shall be binding upon Buyer unless accepted by it in writing.

**ACCEPTANCE:** Seller shall cause a copy of this PO to be signed and returned immediately upon acceptance of its terms and conditions. Seller agrees that Buyer may withhold all or part of any payments due hereunder until a signed receipt of this PO is received by Buyer. Should Seller fail to return a signed copy of this PO to Buyer but proceed to supply any Products, Seller shall be deemed to accept the terms and conditions of this PO. Further, Seller shall provide a waiver of lien if requested by Buyer prior to final payment.

**PRICE:** Seller warrants that the prices provided on this PO comply with applicable law and are as low as any net price now given by Seller to any other customer for like material, quantity and services, and agrees that if at any time during the pendency of this PO, lower net prices are quoted anyone for similar materials or services, such lower prices shall be from that time substituted for the prices contained in this PO.

**PACKING AND SHIPMENT:** Deliveries shall be made as specified without charge for boxing, crating, or storage, unless otherwise specified. Products shall be suitably packed to secure lowest reasonable transportation costs and to conform to the requirements of common carriers and any applicable specifications. Seller shall be liable to Buyer for any loss or damage resulting from Seller’s failure to act so as to provide adequate protection during shipment. Buyer's order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Bills of lading shall accompany each invoice. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**DELIVERY. TIME IS OF THE ESSENCE FOR THIS PURCHASE ORDER.** Delivery shall be F.O.B. place of delivery as provided in this PO and risk of loss shall remain with Seller until the Products in a completed state are received by Buyer regardless of whether or not Buyer has made full payment for the Products. Delivery shall be strictly in accordance with the delivery schedule as provided in this PO. If Seller's deliveries fail to meet such schedule, Buyer, without limiting its other remedies, may direct expedited shipping and the difference between the expedited shipping and the PO shipping costs shall be paid by Seller. Buyer may delay delivery and/or acceptance for causes arising beyond its control. Any substitution of manufacturer or part number must be approved prior to delivery. Failure of Seller to comply with such requirements shall entitle Buyer, in addition to any other rights or remedies, to cancel this PO, return any nonconforming Products to Seller and be relieved of all liability for any unaccepted portion. Seller shall not unreasonably anticipate delivery by purchasing materials or manufacturing quantities in excess of what is reasonably required to meet Buyer’s delivery schedule. Items received in advance of Buyer’s delivery schedule may, at Buyer’s option, be returned at Seller’s expense or be accepted and payment withheld until the original payment would have been due if the Products were delivered at the scheduled delivery date and made net of any storage costs.

**WARRANTIES:** In addition to any standard warranty and/or service guarantee, Seller warrants that all Products supplied under this PO shall (a) be free and clear of all liens and encumbrances, good and merchantable title thereto being in Seller; (b) be new Products (unless otherwise agreed to in writing); (c) be free from any defects in design, material or workmanship and of good and merchantable quality; (d) conform to Buyer’s specifications, if any, or in the absence of exact specifications, all Products shall be of the kind best suitable for the known purposes for which purchased hereunder; (e) conform to the

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sample(s) approved by Buyer, if any, and (f) comply and have been produced, processed, delivered and sold in conformity with all applicable federal, state and other laws, administrative regulations and orders. Seller further warrants that all services furnished hereunder shall be performed in a good and workmanlike manner, in accordance with the highest professional standards for such services and the best practices in Seller's industry. The foregoing warranties shall survive inspection, delivery and payment, and shall run in favor of Buyer, and its successors, assigns and customers (whether direct or indirect). If any such Products shall be found to be unsatisfactory for any reason, Buyer may, at its option, retain such Products at an adjusted price or return them to Seller for repair, replacement or refund as Buyer shall direct. Buyer shall be reimbursed by Seller for all of its expenses in connection with the handling and transporting of any such unsatisfactory Products, and Seller shall assume all risks of loss or damage in transit to Products returned by Buyer pursuant to this PO. If any such services shall be found to be unsatisfactory for any reason, Buyer may, in addition to exercising its other rights and remedies under this Agreement or otherwise at law, require Seller to perform the services properly and promptly, without additional cost to Buyer. Buyer's remedies hereunder shall be cumulative and in addition to those provided by law, and shall include without limitation incidental and consequential damages, and reasonable attorneys' fees. Seller's obligations under this Agreement are in addition to any obligations otherwise imposed by law.

DRAWINGS AND SPECIFICATIONS: Data, specifications and drawings supplied to Seller under this PO are the property of Buyer and must be returned to Buyer upon completion of this PO. Such data, specifications and drawings are to be used solely in the performance of this PO by Seller and shall not be used or disclosed for any other purpose whatsoever. Buyer shall retain title to all such data, specifications and drawings.

INSPECTION: All Products shall be received subject to Buyer's inspection. Buyer shall have the right at any time to reject any Products which do not conform to all specifications, terms and conditions of this PO and correct the same at Seller's expense. Rejected Products may be returned to Seller at Seller's risk and expense. Buyer's inspection shall never constitute a waiver of the right of subsequent rejection by reason of any previously undiscovered or latent defect.

Upon notice, Buyer may make inspection visit(s) at the site where the Products are being designed or manufactured or services performed. Upon request, Seller shall provide Buyer with written or verbal reports relating to the status of its performance hereunder. Neither any inspection, testing, delivery nor payment for the Products and services delivered hereunder shall constitute acceptance thereof. Buyer may reject any Products or services which are in Buyer's judgment defective or nonconforming. Products rejected or those which are supplied in excess of quantities called for herein may be returned to Seller at its expense. In addition, Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping such Products. In the event Buyer receives Products or services whose defects or nonconformity are not apparent on examination, Buyer reserves the right to require replacement, as well as payment of damages. Nothing in this PO shall relieve the Seller from the obligations of testing, inspection and/or quality control.

INTELLECTUAL PROPERTY. Seller warrants that the sale or use of Products or provision of services furnished under this PO will not infringe or contribute to infringement of any patent, copyright, trade secret, trademark, or other intellectual property rights in the United States or elsewhere, and Seller shall indemnify and hold harmless Buyer, its successors, affiliates, assigns, officers, directors, insurers, agents, employees, customers (whether direct or indirect), and those acting on Buyer's behalf, against any and all losses, liabilities, claims, actions, proceedings, suits, royalties, license fees, fines or penalties, liens, encumbrances, costs, demands, damages and expenses (including but not limited to attorneys' fees and other costs of handling or defending any infringement action and attorneys' fees incurred by Buyer in enforcing this indemnity) which Buyer, or any of them, may sustain or incur as the result of a breach of this warranty. Should Buyer's use of Products or services be enjoined, Seller shall, at Buyer's option, promptly (a) procure a perpetual, royalty-free license for Buyer to use the Products or services as intended, or (b) replace the Products or services with, or modify the Products or services to become, a non-infringing equivalent of equal performance and quality, in any case without additional cost to Buyer.

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**INDEMNITY:** Seller agrees to indemnify and hold harmless Buyer, its successors, affiliates, assigns, officers, directors, insurers, agents, employees, customers (whether direct or indirect), and those acting for or on Buyer's behalf, from and against any and all losses, liabilities, claims, actions, proceedings, suits, royalties, license fees, fines or penalties, liens, encumbrances, costs, demands, damages and expenses (including but not limited to attorneys' fees and other costs of handling or defending any action and attorneys' fees incurred by Buyer in enforcing this indemnity), arising out of, resulting from or in any way, directly or indirectly, connected with (a) the performance or nonperformance of this PO by Seller; (b) the sale, use, design, preparation, manufacture, fabrication, construction, completion, transportation, delivery, failure to deliver, and/or installation of the Products; or (c) any breach or alleged breach of any of Seller's agreements or representations and warranties herein. Seller, in any indemnification claim hereunder, hereby expressly and without reservation waives any defense or immunity it may have under any applicable Workers' Compensation laws or any other statute or judicial decision, disallowing or limiting such indemnification where an employee of Seller makes a claim against any indemnitee herein, and Seller consents to a cause of action for indemnity. Seller shall also indemnify and hold harmless Buyer from any and all claims for infringement of any patent, copyright or trademark by reason of the design, manufacture, purchase, use or sale of the Products and shall indemnify Buyer for all costs, expenses, judgments, liability and damages, including attorneys' fees, which Buyer may incur or have rendered against it by reason of any alleged infringement.

**CHANGES:** Buyer reserves the right to change specifications, drawings or quantities, of the Products or services covered by this PO, subject to equitable adjustment for any necessary differences in price or time of delivery.

**PROPRIETARY INFORMATION:** Unless specifically and comprehensively covered by the confidentiality, nondisclosure and non-use provisions of another document signed by Buyer and Seller, (a) all information furnished by Buyer or any other person acting on behalf of Buyer and all information learned or observed about Buyer or its operations through performing this PO is confidential and Seller shall not disclose any such information to any other person, or use such information for any purpose other than performing this PO without Buyer's express written consent and (b) all information in tangible form, including drawings, samples, models, specifications, or other documents provided by Buyer or prepared by Seller for Buyer shall be returned to Buyer promptly upon request. Seller shall not publicize the fact that Buyer has contracted to purchase Products or services from Seller, nor shall any information relating to this PO be disclosed without Buyer's written consent. Unless otherwise agreed in writing, no information disclosed by Seller to Buyer shall be deemed confidential and Seller shall have no rights against Buyer with respect to Buyer's use thereof.

**ASSIGNMENTS AND SUBCONTRACTING:** Seller may not subcontract any part of this PO beyond that customary in the conduct of its business without Buyer's prior written consent. Seller may not assign this PO or amounts due hereunder without Buyer's written consent.

**WAIVER:** Buyer's failure to insist on performance of any of the terms of this PO, its failure to exercise any right or privilege or its waiver of any breach hereunder shall not effect a waiver of any other right or privilege, whether of the same or similar type.

**EQUAL EMPLOYMENT/NON-DISCRIMINATION.** Seller shall not engage in any conduct or practice which violates any applicable law, order, or regulation prohibiting discrimination against any person by reason of his or her race, color, religion, national origin, sex or age. Seller shall comply with the requirements of Section 202 of Executive Order 11246, entitled "Equal Employment Opportunity," and the regulations promulgated thereunder by the Federal Contract Compliance Office of the Department of Labor, including 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), and all other government agencies authorized to issue regulations under Executive Order 11246, the Civil Rights Act and the Age Discrimination in Employment Act. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take

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affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

WORK ON BUYER'S PREMISES: Before Seller provides any services or work on Buyer's premises, Seller will examine the premises and any specifications or other documents furnished in connection with the Products and satisfy itself as to the condition of the premises and site. No allowance shall be made in respect of any error as to any of the foregoing on the part of Seller. Seller shall at all times keep the premises free from accumulations of waste material or rubbish. At the completion of installation of the Products, Seller shall leave the premises in broom-clean condition. Seller assumes all risks and shall indemnify and hold Buyer and its employees harmless from and against all damages, claims, suits or liabilities arising out of, or in any way connected with damages to vehicles or other personal property of Seller, its employees and subcontractors caused by accidents or occurrences on Buyer's premises.

ISNETWORLD SUBSCRIPTION: Unless waived in writing by Buyer, Seller agrees to maintain at Seller's expense a subscription with ISNetworld ([www.ISNetworld.com](http://www.ISNetworld.com)) ("ISN") for the duration of this PO. Seller shall also furnish ISN with any information requested by ISN in connection with ISN's evaluation of Seller. In the event that Seller's ISN rating falls below C Seller shall promptly take all steps necessary to improve the rating so that it is equal to a B or higher. If Seller's does not improve such rating to B within 30 days after the issuance of the rating by ISN, Seller shall be considered in material breach of this PO. Buyer makes no representation about the quality of services being performed by ISN. Buyer's use of ISN in connection with the services provided by Seller shall not constitute or be construed as Buyer assuming responsibility or liability for safety under this agreement or at law, and does not relieve Seller from full compliance with its legal and contractual obligations. ISN is an independent contractor, and any acts or omissions by ISN shall not be considered an act or omission of Buyer. ISN is not an agent of Buyer.

INSURANCE: Seller shall take out and maintain with a carrier or carriers having a Best rating of not less than B+ at least the following minimum insurance at its expense for the duration of this PO: (a) Workers' Compensations Coverage shall be in compliance with applicable state and federal laws, and Employer's Liability Insurance with a limit of at least \$100,000; (b) Comprehensive General Liability Insurance ("CGL") with limits of not less than \$5,000,000 combined single limits per occurrence, which insurance will include Blanket Contractual; (c) Automotive Liability Insurance ("AUTO") with limits of not less than \$5,000,000 combined single limits per occurrence, which insurance will be in effect for all owned/non-owned/hired vehicles of Seller; (d), if Products include professional services, Professional Errors and Omissions with limits of not less than \$2,000,000 claims made; and (e) Contractor's Pollution Liability ("CPL") with limits not less than \$2,000,000 claims made basis. Insurance coverages described in (b), (c) and (e) may be achieved through a combination of CGL and umbrella policies, AUTO and umbrella policies, and CPL and umbrella policies that specifically include contractor's pollution coverage, respectively, that yield limits of not less than \$5,000,000 per occurrence and \$5,000,000 general aggregate for each. Buyer will be added in insurance coverages described in (b) and (c) as an Additional Insured. None of the above insurance coverages shall be cancelable or materially modified except upon thirty (30) days' prior written notice to Buyer. All policies shall (a) provide a waiver of subrogation in favor of Buyer, its affiliates and subsidiaries. Upon request by Buyer, Seller shall provide a certified copy of its liability insurance certificate attesting its coverage as detailed in this PO to ISN ([www.isn.com](http://www.isn.com)). Such coverage must be maintained continuously during the course of the PO, and renewal certificates must be provided as required, satisfactory in form to ISN and Buyer. Seller shall also provide such certificate to Buyer upon Buyer's request.

LIENS: Seller agrees that it shall not file any liens as a result of producing Products or services hereunder and that it shall not permit its subcontractors or other suppliers from filing such liens. Upon request, Seller shall provide Buyer with lien waivers for itself, its subcontractors and other suppliers in a form satisfactory to Buyer, who may withhold any payment otherwise due until it has received reasonable assurances that all of Seller's obligations respecting the Products or services

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have been paid. If a lien is filed, Seller shall cooperate fully with Buyer, at Seller's expense, nor cause the lien to be removed.

STATUTE OF LIMITATIONS: All rights of Seller to commence any court action or proceeding with respect to this PO shall terminate one (1) year after the cause of action has accrued.

LANGUAGE: The parties have requested that this PO and all Documents, communications and documents relating thereto be expressed in the English language.

TERMINATION: Buyer may, at any time, terminate, suspend, or delay this PO in whole or in part by prior written or email notice to Seller. Immediately after receipt of such notice, Seller shall stop all performance hereunder except as may otherwise be directed by Buyer. In the case of termination of this PO, Seller shall transfer to Buyer, in accordance with Buyer's directions, all materials and all information accumulated, specifically prepared or acquired by Seller for use in relation to the design, development, manufacture, assembly, shipment, installation, operation, maintenance or repair of the Products and all supplies, shop drawings, work in process, equipment, machinery or parts prepared, acquired or used by Seller in connection with such items and for which Seller is to be reimbursed hereunder, and all working drawings, sketches, specifications, and other information accumulate, prepared or acquired by Seller with respect to the Products. Seller shall, if directed by Buyer and to the extent stated in the notice of termination, suspension or delay, make all efforts necessary to preserve the work in progress and to protect the Products whether still at Seller's manufacturing facilities or in transit to Buyer. If Seller is not then in default in the performance of any of its obligations hereunder, and if Seller has taken reasonable steps to mitigate its damages resulting from such termination, Buyer shall pay to Seller, as Seller's sole and exclusive remedy for termination under this section, to the extent not already paid to Seller, an amount equal to: (a) reasonable and documented costs incurred by Seller in accordance with this PO prior to Seller's receipt of notice of termination, plus (b) the reasonable and documented costs and charges incurred by Seller in winding up its activities under this PO prior to the effective termination date, provided, however, that the amounts listed in (a) and (b) of this Section plus prior payments to Seller shall in no event exceed the purchase price provided in this PO.

DEFAULT: If Seller: (a) becomes insolvent, (b) has a petition under any chapter of the bankruptcy laws filed by or against it; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver requested for or appointed to it; (e) fails to use properly skilled personnel in its performance under this PO; (f) should fail to make prompt payment to any subcontractors it may have or for any material, labor, transportation, supplies, fuel, use of equipment or any other expense it incurs under this PO; or (g) fails to comply with any of its obligations under this PO then Buyer may, at its option either cure the default at Seller's expense or terminate this PO after first giving Seller three (3) days' notice to cure such default. Immediately after such termination, Buyer may: (i) take possession of the Products wherever they may be located and in whatever state of completion they may be together with all drawings and other information necessary to enable Buyer to have the Products completed, installed, operated, maintained and/or repaired; (ii) pay to Seller any amount then due under this PO after taking full credit for any offsets to which Buyer may be entitled; (iii) contract with or employ any other party or parties to finish the Products; and (iv) collect from Seller any additional expense, losses or damage which Buyer may suffer.

GENERAL: Assignment of this PO or any interest therein or any payment due or to become due thereunder, without prior written agreement by Buyer shall be void. Buyer shall have the right to assign or transfer any of its rights and/or obligations related to this PO to any person or entity.

Any addition or other modification in these terms or in quantities, prices or deliveries which is contained in any acknowledgement, invoice, other form or communication from Seller is hereby objected to and rejected, notwithstanding Buyer's acceptance of delivery or payment for Products or services.

Buyer shall be entitled to set-off any amount owing at any time from Seller to Buyer or any of its affiliated companies against any amount payable at any time by Buyer or any of its affiliated companies to Seller.

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All notices and any other communications required or permitted herein shall be in writing and may be sent by facsimile or electronic mail, a nationally recognized overnight courier service, first class mail, or hand delivered to the parties at the locations set forth below. Such notice shall be deemed to have been given on the date of the delivery thereof to the party receiving such notice.

Seller is acting as an independent contractor, and the manner and means of conducting the work which is a part of the Products will be under Seller's sole control subject to compliance with all of the terms of this PO and to the continuing right of inspection by Buyer's representatives.

In the event that any words, phrase, clause, sentence or other provision of this PO shall violate any applicable statute, ordinance or rule of law in any jurisdiction in which it is used, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this PO.

This Agreement and the performance thereunder shall be governed by and construed in accordance with the laws of the State of Wisconsin excluding its principles of conflicts of laws, and the parties hereby irrevocably commit to the jurisdiction and venue of the Wisconsin state court located in Outagamie County, Wisconsin, or the Federal District Court for the Eastern District of Wisconsin to adjudicate any dispute arising hereunder or relating hereto.