

# PURCHASE ORDER TERMS AND CONDITIONS FOR LIBERTY COCA-COLA BEVERAGES LLC

The term "goods" refers to all materials, supplies, equipment, parts, accessories, ingredients and other items to be sold or leased to Buyer hereunder, and unless the context otherwise requires, shall also include installation and other services related to the goods which Seller may agree to provide. The term "services" refers to all services of any nature whatsoever ordered or required by Buyer hereunder.

## 1. Acceptance; Applicable Terms and Conditions of Purchase

(a) Upon receipt by Buyer of an express acceptance by Seller, or upon Seller's commencement of work on the goods subject to this Purchase Order ("Order"), or upon shipment of such goods, or Seller's commencement of installation of services, whichever occurs first, this Order shall become a contract with the terms and conditions herein set forth.

(b) Acceptance of this Order is expressly limited to the terms and conditions herein contained on both sides hereof. Buyer shall not be bound by any provisions in Seller's order acknowledgement or acceptance forms or other documents (including counter offers) which propose any terms or conditions in addition to or differing with the terms and conditions set forth herein, and any such terms and conditions of Seller and any other modification to this Order shall have no force or effect and shall not constitute any part of the terms and conditions of purchase or lease, except to the extent separately and specifically agreed to in writing by the Buyer. Buyer's failure to object to provisions contained in Seller's documents shall not be deemed a waiver of the terms and conditions set forth herein, which shall constitute the entire agreement between the parties.

(c) No amendment, deletion, supplement or change in terms and conditions contained herein shall be binding on Buyer unless approved in writing by the Buyer.

## 2. Price

(a) Prices shall be firm and not subject to adjustment or variation unless specifically approved in writing by the Buyer.

(b) Seller warrants that the prices herein specified are as low as any net prices now given by Seller to any other customer for goods or services of like grade and quality in like quantities, and Seller agrees that if at any time during the pendency of this Order lower net prices are quoted under similar conditions, said lower net prices shall be from that time substituted for the prices herein. Seller agrees that any price reductions made in the goods or services covered by this Order subsequent to its acceptance but prior to payment thereof will be applicable to this Order.

(c) Except as otherwise provided herein, the prices herein include all costs and charges to be incurred by Seller, including, without limitation, installation and other service charges, all applicable federal, state and local taxes and duties, all wages and fees for services and materials, all charges for transportation, packing, packaging and returnable containers, all costs of design, engineering, and development, and all costs for tooling, gauges, jigs, fixtures, dies, molds, patterns, and similar property that may be obtained or required by Seller for use in the manufacture, fabrication or assembly of the goods or performance of the services called for by this Order.

## 3. Specifications

(a) Unless otherwise authorized in writing by Buyer, Seller shall deliver goods or render services, or both, per all specification designs, drawings and performance criteria, if any, furnished by Buyer or furnished to Buyer by Seller, without variation.

(b) Where applicable, Seller shall comply with the specifications of The Coca-Cola Company for the goods and services and shall comply with the requirements of any agreement entered into between Seller and The Coca-Cola Company which authorizes Seller to supply Buyer, including but not limited to those agreements known as Master Authorization Agreements.

(c) Buyer may, by written order, change any one or more of the following terms of this Order: (i) the specifications, designs, drawings or performance criteria; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; (iv) delivery schedule; and (v) quantity. In this event and if appropriate, Buyer may in writing request an equitable adjustment in the prices or delivery terms of this Order, and Seller may in writing make claim for the cost of any redundant material or work in process, but not for any cost of design, engineering or development, special tooling or general purpose equipment unless such items have been specifically ordered and separately priced in this Order; provided, however, that Seller shall, in all events, proceed diligently to supply the goods or services contracted for under this Order as so changed. Any and all claims and requests by Seller under this subsection (b) shall be deemed waived unless made in writing and received by Buyer within ten (10) business days from the receipt by Seller of the written order change.

## 4. Assurance of Performance

In the event Seller fails to perform when due any delivery and/or service required by this Order, or Buyer in good faith has any other reason to question the Seller's intent or ability to perform, Buyer may, at its election, demand adequate assurance of performance, including that Seller furnish a performance bond or letter of credit, conditioned to indemnify Buyer for any loss Buyer may sustain by failure of Seller to perform its obligations. In the event Seller fails to comply with such demand within ten (10) business days thereafter, Buyer may treat this failure as a default.

## 5. Termination

(a) This Order may be terminated by Buyer: (i) promptly upon written notice to Seller for the convenience of Buyer, or (ii) at any time if Seller is in default under this Order, fails to use properly skilled personnel, fails to make prompt payment to any subcontractors it may have, fails to make prompt payment for any materials, labor or any other expenses it incurs in the production or construction of the goods or the performance of any services, or (iii) at any time upon the insolvency of Seller or in the event of the institution of any proceeding by or against Seller in bankruptcy or insolvency or under any provisions of the Bankruptcy Act or for the appointment of a receiver or trustee or any assignment for the benefit of creditors of Seller, or (iv) upon any sale, transfer or other disposition in the aggregate of more than ten percent (10%) of the stock or other evidence of ownership of Seller. Buyer may require a financial statement from Seller at any time during the term of this Order for the purpose of determining Seller's financial responsibility. Any

termination pursuant to parts (ii), (iii) or (iv) of this subsection (a) shall be deemed to be a termination for default

(b) In the event of termination for the convenience of Buyer, Seller may in writing make claim for the cost of any work or service, or both, in process, but not for any cost of design, engineering or development, special tooling or general purpose equipment unless such items have been specifically ordered and separately priced in this Order. Other than as specified in the preceding sentence, Seller shall not be entitled to any claim, remedy or damages from Buyer. Any and all claims or requests by Seller under this subsection (b) shall be deemed waived unless made in writing and received by Buyer within ten (10) business days from the date of termination.

(c) In the event of termination by Buyer pursuant to (ii), (iii) or (iv) of subsection (a) above, Seller shall be entitled to no claim for damages or for the cost of any work or service, or both, in process. At Buyer's option, Buyer may produce or purchase or otherwise acquire goods or services elsewhere on such terms or in such manner as Buyer may deem appropriate and Seller shall be liable to Buyer for any excess cost or other expenses incurred by Buyer; and/or Seller shall deliver to Buyer any of the goods or services for which Buyer makes written request at or after termination, and Buyer will pay Seller the lesser of the herein contained or fair value of any of such goods or services so requested.

## 6. Warranties

(a) Seller warrants that it will diligently perform its services to the highest degree of workmanship and that all goods and services shall be free from defects in workmanship and material and shall be in conformity with specifications, drawings, samples, advertising materials, descriptions or performance criteria referred to herein, if any, and if of Seller's design, shall be free from design defects. Seller further warrants that all goods shall be merchantable and that all goods and services shall be fit for Buyer's particular purposes, if any, as have been made known to Seller, and shall be safe and appropriate for the purpose for which goods and services of that kind are normally used. Seller warrants that the goods, services and production, packaging and delivery thereof, shall be in compliance with all applicable federal, state and local laws, rules, regulations, requirements, ordinances and orders, including without limitation, all provisions of (i) the Occupational Safety and Health Act of 1970, as amended, (ii) Executive Order 11246 issued September 24, 1965, as amended, (iii) the Federal Food, Drug and Cosmetic Act, as amended, (iv) Fair Labor Standards Act, as amended, and (v) Title 42, U.S.C.A. § 2000, et. seq., as amended, and (vi) the Immigration Reform and Control Act, as amended; and all rules, regulations and orders there under (collectively, "Applicable Laws"). Seller shall also comply with all Applicable Laws in the manufacture and distribution of goods and services to Buyer and in providing services to Buyer, including but not limited to those relating to basic human rights. Seller warrants that all foods, food additives or all substances for use in, with or for foods, including soft drinks, comprising each shipment or other delivery hereby made by the Seller to, or on the order of, Buyer are hereby warranted as of the date of such shipment to be, on such date, not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, including the Food Additives Amendment of 1958 (the "Act") or within the meaning of any state food and drug law, the adulteration and misbranding provisions of which are similar to those of the Act and are not articles which may not under the provisions of Section 404 or 505 of the Act be introduced into interstate commerce. For goods and services delivered in the state of California, this Order and the goods and services delivered hereunder must be in compliance with the Safety Orders of the State of California Division of Industrial Safety and Proposition 65. On request Seller shall furnish Buyer certificates of compliance with all Applicable Laws which apply to this Order. Seller shall, at time of delivery or invoicing, certify that goods sold hereunder were manufactured or produced in full compliance with Section 12 of the Fair Labor Standards Act, as amended, to the date of certification and all applicable United States Department of Labor Regulations promulgated thereunder.

(b) Seller further warrants that it has full power to enter into, and to perform fully pursuant to the provisions of, this Order and that no goods or services or the provision, use or sale thereof shall in any way infringe upon or violate any rights of any party whether they be patent, trademark, trade secret, copyright, contractual or otherwise. Seller warrants that it is not owned by or affiliated with an employee of the federal government who does business with Buyer in his/her capacity as a federal employee.

(c) All express warranties shall survive inspection, testing, and acceptance of the goods by Buyer and expiration or termination of this Order and shall be in addition to all warranties, express, implied or statutory.

(d) All warranties shall inure to Buyer, its customers and subsequent owners or consumers of the goods or services covered hereunder or the end products of which they are a part.

(e) Seller agrees, at its expense and at Buyer's option to defend or assist in the defense of any action against Buyer which action, in whole or in part, whether by way of claim, counterclaim or defense, is based upon an alleged breach of any of Seller's warranties.

(f) All warranties shall be construed as conditions as well as promises.

## 7. Buyer's Remedies and Damages

(a) Seller hereby agrees to fully indemnify, release and hold harmless Buyer and Buyer's subsidiaries, affiliates, shareholders, directors, officers, employees and agents from and against any and all liability, losses, costs, expenses (including court costs and attorneys' fees, interest and profits), claims, demands, suits by any person(s), proceedings, investigations, injuries, damages, damages to property, bodily injuries, sickness, death and any other losses of any kind whatsoever arising out of, resulting from, caused by, incident to, or in any way connected with: (i) any breach or alleged breach of this Order by Seller or its directors, officers, managers, employees, agents, subcontractors, or suppliers (collectively, the "Seller Parties"), including without limitation, any breach of Seller's representations or warranties under this Order; (ii) any negligent act or omission, or willful act or omission, by a Seller Party; (iii) any violation of a federal, state, or local law or regulation by a Seller Party; and/or (iv) any infringement or alleged infringement of any third party's intellectual property rights arising from a Seller Party's use of intellectual property.

(b) In the event any claim should be made against Buyer at any time during the term hereof, that by virtue of its use or resale of the goods or services or otherwise, Buyer is infringing or contributing to the infringement of any actual or alleged industrial property rights, Buyer may at its option, thereupon or at any time during the continuance of such claim refuse to accept deliveries hereunder and terminate this Order and shall, in such case, be entitled to the indemnity set forth in subsection (a) above, or Buyer may require Seller, at Seller's expense, to (i) either procure within 30 days for Seller the right to continue using said goods, or (ii) modify same so the goods and services become non-infringing, or (iii) replace the goods with non-infringing goods.

(c) Seller shall not assert against Buyer or its customers any industrial property rights relating to the use or sale of goods or services.

(d) This indemnification provision shall survive termination of this Order.

## **8. Packaging and Shipping; Risk of Loss**

- (a) All packing and packaging shall be in accordance with specific instructions from Buyer on the face hereof or in separate notification. In the absence of specific instructions, all packing and packaging shall comply with good commercial practice, applicable carrier's tariffs and all applicable state, federal and local law and shall consist of suitable containers for optimum protection of the goods and for in-plant handling and storage.
- (b) Delivery shall be made by the carrier and route specified by Buyer. In the absence of instructions, shipments shall be routed via the most economical mode of commercially reasonable transportation available consistent with the time requirements established for this Order.
- (c) The number of the Order must be shown on all packing slips and invoices, and except in the case of ingredients, on all packages, crates or other containers, together with the destination party and address specified by Buyer.
- (d) If invoices are subject to discount for prepayment, Seller shall state such terms clearly on such invoices. Buyer's opportunity for prepayment shall not be prejudiced by delays beyond Buyer's control.
- (e) Delivery shall not be deemed complete until the goods have actually been received and accepted by Buyer, or by the person to whom the goods were delivered, and the risk of loss on the goods shall be borne by Seller until such delivery and acceptance, Seller shall also bear the risk of loss on the goods rejected by Buyer, from the time of shipment thereof to Seller until the redelivery thereof to Buyer.

## **9. Delivery or Performance Schedule; Quantities**

- (a) Time is of the essence.
- (b) Buyer may cancel this Order for any nonconformity in any lot or installment delivered or services performed hereunder, including without limitation failure of Seller to deliver the goods or perform services when due, delivery of defective or otherwise nonconforming goods, delivery of an insufficient quantity of goods, or deficient, defective or incomplete performance of services.
- (c) Seller shall promptly advise Buyer of any delay or anticipated delay in delivery or performance and shall pay Buyer for any losses sustained or costs incurred by Buyer as a result of a late delivery.
- (d) Seller shall not, without Buyer's prior written consent, manufacture or procure materials in advance of Seller's normal flow time or deliver goods or perform services in advance of schedule. In the event of termination or change in the terms of this Order, no claim by Seller will be allowed for any such manufacture or procurement of performance of services in advance of such normal flow time without the prior written consent of Buyer.
- (e) Unless specified otherwise on the face hereof, this Order shall not be deemed separable as to the goods and services ordered herein.
- (f) Goods which are to be shipped shall be shipped F.O.B. destination unless otherwise specified by Buyer. Any shipments which are sent C.O.D. without Buyer's consent will not be accepted and will be made at Seller's risk.

## **10. Inspection and Testing**

All goods and services are subject to inspection and rejection by Buyer at any time, including during their manufacture, construction or preparation, notwithstanding any prior payment or inspection. Goods or services may at any time be rejected for defects or defaults revealed by inspection, analysis or by manufacturing operations or use after delivery even though such goods or services may have previously been inspected and accepted. Without limiting any of the rights it may have, Buyer at its option may require Seller, at Seller's expense (i) promptly to repair or replace any or all rejected goods, or to cure or reperform any or all rejected services, or (ii) to refund the price of any or all rejected goods or services. All such rejected goods will be held for Seller's prompt instruction and at Seller's risk. Nothing contained herein shall relieve in any way Seller from the obligation of testing, inspection and quality control.

## **11. Force Majeure**

- (a) Whenever any causes of the type specified in subsection (b) below delay or prevent full and timely performance of this Order or threaten to, Seller shall promptly give notice to Buyer.
- (b) Neither party shall be liable to the other for any delay or failure to perform fully where such delay or failure is caused by acts of public enemy, acts of a sovereign nation or any state or political subdivision or fires, floods or explosions, where such cause is beyond the reasonable control of the affected party and renders performance commercially impracticable as defined under the Uniform Commercial Code. In the event of such a failure or delay in performance by Seller, Buyer may at its option (i) reject any partial or future performance by Seller upon giving reasonable notice in writing to Seller, and this Order shall thereupon be terminated and neither party shall be liable to the other hereunder, or (ii) where limited production by Seller is possible, Buyer may require Seller to apportion its materials and resources so as to produce for Buyer that quantity of goods ordered by Buyer which bears the same relationship to Seller's total production for all customers as the scheduled production of goods for Buyer bears to the Seller's total scheduled production.

## **12. Industrial Property**

- (a) In the event Seller, or any subcontractor or other third party working for Seller, creates or develops any designs or goods or services especially for Buyer, the proprietary rights to such designs, goods or services shall vest in Buyer, and Seller hereby assigns and conveys and shall assign and convey or cause to be assigned or conveyed all such proprietary rights, including but not limited to all copyright, trademark and patent rights therein.
- (b) Except as provided in the preceding subsection, in the event Seller, or any subcontractor or other third party working for Seller, designs or incorporates any new features of design or improvements in any designs or goods made, or services furnished, pursuant to this Order as a result of Seller's or such third party's compliance with the drawings, specifications or directions of Buyer, Seller grants to Buyer the right to reproduce such designs or goods or to perform such services together with, if applicable, a royalty-free, nonexclusive, irrevocable license covering such new feature of design or improvement.
- (c) Seller shall assert no claim of any proprietary interest in or to any drawings, specifications or other material furnished by Buyer to Seller in connection herewith, and Seller shall not use such drawings, specifications or other material (other than in connection with this Order) without the prior written consent of Buyer.
- (d) Seller shall execute, and shall cause subcontractors and other third parties working for it to execute, any and all instruments

deemed by Buyer to be necessary or appropriate under subsections (a) and (b) hereof.

(e) Any information which Seller may disclose to Buyer with respect to the design, manufacture, sale or use of the goods or services shall be deemed to have been disclosed as part of the consideration for this Order, and Seller shall not assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use thereof. Buyer does not grant indemnity to Seller for infringement of any patent, trademark, and copyright or data rights.

(f) In no event shall Seller sell or distribute in any manner whatsoever to persons other than Buyer or parties authorized in writing by Buyer, goods, supplies, materials or objects of any kind which are imprinted with or contain Buyer's logo, trade names, trademarks or labels, even though rejected by Buyer as nonconforming.

### 13. Disclosure of Information; Confidentiality of Order

(a) Seller shall not use or disclose any data, designs, or other information belonging to, supplied by or on behalf of Buyer. Upon completion by Seller of its obligations under this Order or upon Buyer's request, such data, designs and other information or any copies thereof shall be returned to Buyer. Where in accordance with Buyer's written authorization, Buyer's data, designs or other information is furnished to Seller's suppliers for procurement of supplies by Seller for use in the performance of this Order; Seller shall insert the substance of this provision in its own purchase order.

(b) This Order is confidential, and Seller shall not, without prior written consent of Buyer, disclose any information relative to or derived under this Order, except as may be required to ensure performance. Unless otherwise authorized by Buyer, Seller shall not advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services.

### 14. Assignment and Delegation

Neither this Order, or any part thereof, may be assigned, subcontracted or otherwise transferred by Seller, voluntarily or by operation of law, even with a majority of the stock or assets of Seller, without the prior written consent of Buyer, and any such assignment or transfer without such consent shall be null and void and of no force or effect whatsoever. The terms and conditions of this Order shall bind any permitted successors and assigns of Seller. Any consent by Buyer to assignment shall not be deemed to waive Buyer's right to recoupment and/or set off of claims arising out of this or any other transactions with Seller, its divisions, affiliates or subsidiaries, or to settle or adjust matters with Seller without notice to permitted successors and assigns. Seller has no authority to bind Buyer to any obligation to third parties. Seller shall indemnify and hold Buyer harmless against any claims arising out of acts of subcontractors or its employees performing services on Buyer's premises.

### 15. Responsibility for Property; Indemnification

(a) Any materials, items or equipment (including, but not limited to, for purposes of this Section, all tools, dies, mechanicals, negatives, plates, drawings, sketches, and artwork) furnished, funded or paid for by Buyer, provided or made available to Seller in connection with this Order, shall be deemed as held by Seller upon consignment. All such materials, items and equipment not used in the manufacture of the goods shall, as directed, be returned to Buyer at Buyer's expense, and, if not accounted for or so returned, shall be paid for by Seller. In no event shall Seller transfer or move such materials, items or equipment to the premises of any third party without the written permission of Buyer. Seller shall not use such materials, items or equipment for any purposes or for any party not authorized in writing by Buyer. Seller shall be fully responsible and indemnify Buyer for any loss or destruction of or damage to such materials, items or equipment until the same are returned to the possession of Buyer, whether or not such loss, destruction or damage is attributable to acts or omissions of Seller or its representatives, officers, agents or employees (normal wear and tear for authorized purposes and parties excepted).

(b) Seller shall obtain and maintain property insurance upon all such materials, items or equipment to the full replacement value thereof. This insurance shall be specifically so endorsed, and Buyer shall be named as an additional insured.

### 16. Insurance

(a) Seller shall maintain at all times during this Order, the following minimum insurance coverages (or self-insurance in equivalent amounts):

Commercial General Liability \$1,000,000 per Occurrence Bodily Injury & Property Damage  
\$1,000,000 Personal & Advertising Injury  
\$1,000,000 Products/Completed Operations  
\$2,000,000 General Aggregate  
Commercial Auto Liability \$1,000,000  
Combined Single Limit- Any Auto  
Workers Compensation Statutory  
Employers Liability \$1,000,000 Each Accident \$1,000,000 Disease – Each Employee  
\$1,000,000 Disease – Policy Limit

(b) Seller shall furnish Buyer with a certificate evidencing the aforementioned insurance coverage. Such certificate shall provide for thirty (30) days written notice to Buyer in the event of cancellation, material modification of coverage, or non-renewal. Buyer, its subsidiary companies, officers and employees shall be named as additional insured on all policies except for workers compensation. Any subcontractors used by Seller are required to maintain the coverage terms stated above.

(c) Compliance by Seller with the insurance provisions of this Order shall not relieve Seller of any liabilities with respect to the agreements contained herein and the goods and/or services provided hereunder.

### 17. Payment

(a) Invoices will normally be paid according to discount terms, or if no discount is offered, within thirty (30) to sixty (60) days after receipt and acceptance of the goods or completion and acceptance of services or according to other agreed upon payment terms. At

least five (5) working days are requested to process payments from the date of receipt of invoices irrespective of when goods and services are received. Unless specified otherwise, discount periods will be computed from either the date of delivery plus three days' allowance for inspection or the date of receipt of correct invoices, prepared in accordance with the terms of this Order, whichever date is later. Payment shall not be construed to limit Buyer's right of inspection, acceptance, set-off, or any other right.

(b) Seller warrants that the payment terms offered Buyer are consistent with the payment terms given by Seller to any other customer for goods or services of like grade and quality in like quantities, and Seller agrees that if at any time during the pendency of this Order more favorable payment terms are quoted to any other customer under similar conditions, said more favorable payment terms shall be made available to Buyer. Seller agrees that any more favorable payment terms for the goods or services covered by this Order subsequent to its acceptance but prior to payment thereof will be applicable to this Order.

#### **18. Paid Stock**

(a) Any goods for which Buyer has paid Seller but which have not been delivered to Buyer or shipped pursuant to Buyer's instruction shall constitute "paid stock" of Buyer. Paid stock shall not be commingled or stored with Seller's own inventory of goods for customers other than Buyer and shall be physically separated from Seller's inventory in an area designated by prominent signs and markings which shall identify the paid stock stored within the warehouse area as the sole property of Buyer.

(b) Seller shall bear all risk of loss, injury or destruction to the paid stock while it is warehoused with Seller and shall obtain and maintain insurance insuring the paid stock against loss, damage or destruction due to accident, theft, fire, flood, abuse or vandalism or other hazards commonly covered by extended coverage insurance.

(c) Seller shall not sell, lease, assign, transfer, pledge, hypothecate or otherwise encumber, except as specifically permitted in writing by Buyer, any paid stock warehoused with Seller or any interest therein. In addition, Seller shall execute such financing statements, security documents and other instruments as Buyer shall deem appropriate to protect Buyer's ownership of the paid stock against claims of creditors of Seller and other third persons. Seller shall and does hereby indemnify and hold harmless Buyer from and against the payment of any sum of money and against any expenses whatsoever, including attorneys' fees and court costs, which Buyer may be called upon to pay or incur resulting from any loss or damage to the goods while warehoused with Seller or resulting from a creditor's or other third party's claim of interest, lien or right in or to any paid stock warehoused with Seller.

#### **19. Taxes and Other Exactions**

(a) Buyer shall be responsible for all transfer, sales, use, value-added taxes, duties, levies, tariffs or similar charges of any kind imposed by any federal, state, local, or other governmental authority for goods or services provided under this Order ("Taxes").

b) Seller shall be responsible for 1) remittance of the Taxes for which Buyer shall be responsible where required by operation of law [i.e., where Buyer is not allowed by the taxing jurisdiction to self-assess and directly remit such taxes], and the filing of any related tax returns; and 2) all other taxes, assessments, charges, duties, fees, levies or other governmental charges, including federal, state, city, county, parish, foreign or other income, franchise, capital stock, real property, personal property, escheatment or unclaimed property, intangible, withholding, FICA (or similar), unemployment compensation, disability, environmental (including taxes under section 59A of the Internal Revenue Code of 1986, as amended, fuel, excise, gross receipts, alternative or add-on-minimum, estimated and all other taxes of any kind for which Seller may have any liability imposed by any governmental authority (including interest, penalties or additions associated therewith) whether disputed or not, and including any transferee or secondary liability in respect of any tax (whether imposed by law, contractual agreement or otherwise) and any liability in respect of any tax as a result of being a member of any affiliated, consolidated, combined, unitary or similar group.

c) Each of the parties will use its reasonable, good faith efforts legally to minimize any taxes associated with the transactions contemplated in this Order. The party requesting that such efforts be made by the other party shall be responsible for all reasonable costs associated with such request.

#### **20. Examination of Seller's Records and Place of Business**

Upon request by Buyer, any duly authorized representative of Buyer shall, until three (3) years after final payment under this Order, have access to and right to examine directly pertinent books, papers, documents, accounts and records of Seller involving transactions related to this Order and to examine Seller's place of business as necessary to determine whether the terms of this Order are being carried out.

#### **21. Waiver**

Buyer shall not, by any act, delay, omission or otherwise, be deemed to have waived any of the rights or remedies under this Order, and no waiver whatever shall be valid as against Buyer unless in writing, signed by an authorized representative of Buyer, and then only to the extent set forth therein. Buyer's waiver of any right or remedy under the terms of this Order on any one occasion shall not be construed as a waiver of any right or remedy which Buyer would otherwise have on a future occasion.

#### **22. Set Off**

Seller agrees that Buyer shall have the right to set off against amounts which may become payable by Buyer to Seller under this contract or otherwise, any present or future indebtedness of Seller to Buyer, money, prepaid inventory or otherwise, whether arising under this Order or otherwise.

#### **23. Miscellaneous**

(a) Except as otherwise expressly provided herein, any notice or communication required or permitted hereunder shall be sufficiently given if sent in writing by registered or certified mail, postage prepaid, to Seller and Buyer at their respective addresses as the same appear on the reverse side hereof. Any such notice, if so mailed, shall be deemed to have been received the third business day following such mailing. Either party hereto may change its address for notice purposes by written notice to the other party as specified herein.

- (b) All rights and obligations under this Order, including matters of construction, validity and performance, shall be governed by the laws of the State of New York.
- (c) The various provisions of this Order are severable and any determination of invalidity or unenforceability of any one provision hereof shall have no bearing on the continuing force and effect of the remaining valid provisions hereof.
- (d) Captions given to various sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof.
- (e) Seller shall be deemed in respect of all activities of Seller contemplated hereunder to be an independent Seller and neither Seller nor any of its agents or employees shall have the right or authority to bind Buyer in any way.
- (f) Nondiscrimination in Employment— Unless this contract is exempted, there is incorporated herein by reference the provisions of Section 202, the equal opportunity clause of Executive Order 11246, as amended, Section 60.7415, the affirmative action clause of the regulations under the Rehabilitation Act of 1973, and Section 60.250.5, the affirmative action clause of the regulations under 38 U.S.C. 4212, the Vietnam Era Veterans' Readjustment Assistance Act of 1974.
- (g) This order contains the entire agreement between Buyer and Seller regarding the subject matter hereof and there has been no other representations or inducements, oral or otherwise, made by any party in connection herewith.
- (h) If applicable, Seller agrees to comply in full with 29 C.F.R. Part 471, Appendix A to Subpart A.

#### **24. Vendor Classification**

Small Business Concern is defined as independently-owned and operated, not dominant in the field of operation in which is bidding and having no more than five hundred employees as defined by the Small Business Administration.

A Minority-Owned business is generally defined to include businesses at least 51% owned and operated by a member or members of a racial minority group such as Asian Pacific American, Black American, Hispanic American, American Indians. The determination of minority status depends solely on ownership and management and is not related to employment of minority persons.

Women-Owned business is generally defined to include businesses at least 51% owned, controlled and operated by a woman or women. All Others-Vendors are those businesses which do not fall within any of the other specified categories.

#### **25. Supplier Guiding Principals**

Seller is required to meet the following standards, at a minimum, with respect to its operations as a whole. These minimum requirements are a part of all agreements between Buyer and its direct and authorized supplier. Buyer expects Seller to develop and implement appropriate internal business processes to ensure compliance with these Seller Guiding Principles (SGP). Buyer routinely utilizes independent third parties to assess Seller's compliance with the SGP; the assessments generally include confidential interviews with employees and on-site contract workers. If Seller fails to uphold any aspect of the SGP requirements, Seller is expected to implement corrective actions. Upon acceptance of, or complete or partial performance under, this Order, Seller warrants that it has read, understands and is in, and will remain in, compliance with all the requirements of these SGP. Buyer reserves the right to terminate this agreement with Seller if Seller cannot demonstrate that it is upholding the SGP requirements without any liability of Buyer to Seller. The minimum requirements are as follows:

- Laws and Regulations – Seller will comply with all applicable local and national laws, rules, regulations and requirements in the manufacturing and distribution of our products and supplies and in the provision of services.
- Child Labor - Seller will comply with all applicable local and national child labor laws.
- Forced Labor - Seller will not use forced, bonded, prison, military or compulsory labor.
- Abuse of Labor - Seller will comply with all applicable local and national laws on abuse of employees and will not physically abuse employees.
- Freedom of Association and Collective Bargaining - Seller will comply with all applicable local and national laws on freedom of association and collective bargaining.
- Discrimination - Seller will comply with all applicable local and national discrimination laws.
- Wages and Benefits - Seller will comply with all applicable local and national wages and benefits laws.
- Work Hours and Overtime - Seller will comply with all applicable local and national work hours and overtime laws.
- Health and Safety - Seller will comply with all applicable local and national health and safety laws.
- Environment - Seller will comply with all applicable local and national environmental laws.
- Demonstration of Compliance - Seller must be able to demonstrate compliance with the Seller Guiding Principles at the request and satisfaction of Buyer.

#### **26. Equal Employment Opportunity/Affirmative Action**

**For purposes of the following subsection, contractor means Buyer and subcontractor means Seller.**

**This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities. In addition, this contractor and subcontractor shall abide by the requirements of 41 CFR § 60-1.4(a) and federal labor law obligations under 29 CFR part 471, appendix A to subpart A.**