

## Procurement Terms and Conditions

### 1. Definitions

- a. "Affiliated Companies" means, collectively or individually, (1) all business units and divisions of YRC Enterprise Services, Inc. or its parents and (2) any entity controlled by, controlling, or under common control with YRC Enterprise Services, Inc. Such entity shall be deemed to be an "Affiliated Company" only so long as such control exists.
- b. "Company" means YRC Enterprise Services, Inc. and/or any of its Affiliated Companies.
- c. "Delivery" means the point in time when Supplier has delivered the goods or provided the services specified in the Purchase Order.
- d. "Master Agreement" means a master agreement for goods and/or services executed by Company and Supplier.
- e. "Order" means the purchase order issued by Company to Supplier which Supplier then invoices against for the goods or services provided to Company by Supplier.
- f. "Supplier" means the party providing goods or services to Company.
- g. "Purchases" means collectively or individually, the products or services purchased, or software licensed, pursuant to an Order.
- h. "Terms" means these Procurement Terms and Conditions.

**2. Application.** These Terms apply if: (a) Supplier ships or provides goods or services to Company; and (b) no executed master agreement is in effect between Company and Supplier. If a Master Agreement is in effect between the parties, the Master Agreement applies to the Order in lieu of these Terms. Except for terms expressly agreed to in writing and signed by a Company representative, any terms that conflict with or are not consistent with the Terms are not valid.

**3. Conflicts.** If a conflict exists between these Terms, the Order, and any other documents related to the purchases, the order of precedence is: (1) these Terms; (2) the Order; and (3) other documents attached to the Order. Any other forms or terms related to the Order, including any terms on Supplier's website, product schedule, "shrink-wrap" or "click wrap" agreement or other pre-printed or boilerplate terms will have no force or effect.

**4. Acceptance.** Unless otherwise specified in an Order, Company will give notice of rejection or be deemed to accept: (a) services within 45 days after Supplier's notice of completion, (b) products and software within 60 days after Supplier's notice of (i) installation, if Supplier performs the installation, or (ii) delivery, if Supplier does not perform the installation. Supplier will, at its expense, repair, re-perform or replace the Purchases, as applicable until Company accepts or finally rejects the Purchases. If Company accepts any Purchases that contain a defect or nonconformity not apparent on examination, Company may revoke acceptance. If Company finally rejects or revokes acceptance, Supplier will refund all amounts paid by Company for the Purchases. Company may test or inspect all Purchases delivered, but Company's inspection, testing or payment (or lack of inspection, testing or payment) is not deemed acceptance of Purchases or a waiver of any right or warranty and does not preclude Company from rejecting defective Purchases that do not meet Company's specifications.

**5. Representations and Warranties.** Supplier represents and warrants that: (a) Supplier has all requisite ownership, rights and licenses to perform fully its obligations arising in connection with the Order and to grant to Company all rights to the Purchases, including good and marketable title for tangible products, free and clear from any and all liens, adverse claims, encumbrances and interests of any third party; (b) Purchases will: (i) conform with all specifications; and (ii) be free from deficiencies and defects in materials, workmanship, design and performance; (c) Purchases that involve services will be performed in a professional and workmanlike manner; (d) Purchases, and use of the Purchases, as permitted under the Order, will not infringe, violate, or misappropriate any intellectual property or proprietary right of any third party; (e) Supplier will, at its expense, promptly correct replace or refund all amounts paid by Company for non-conforming Purchases; and (f) the software or data included in the Purchases will not contain any software viruses or other malicious computer instructions designed to damage, disable or shut down a computer system or any component of a computer system, including security features or data.

**6. Confidential Information.** Supplier may use and copy the Company Confidential Information only for the purpose of performing its obligations under the Order. "Company Confidential Information" means all information relating to the Order and any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Confidential Information shall include, but not be limited to, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, and the terms and pricing under this Agreement, regardless of whether such information is identified as confidential. Confidential Information includes all information received from third parties that either party is obligated to treat as confidential and oral information that is identified by either party as confidential. Company Confidential Information does not include information that is: (i) rightfully known by Supplier before negotiations leading to the Order; (ii) independently developed by Supplier without use of the Company Confidential Information; (iii) part of the public domain or (iv) is lawfully obtained by Supplier from a third party without any confidentiality violation. Copies Supplier makes of Company Confidential Information must contain the same confidential or proprietary notices or legends as the original. Supplier will not disclose Company Confidential Information to any third party without Company's prior written consent. Supplier will

protect Company Confidential Information with the same degree of care as it uses to protect its own information of like importance, but not less than reasonable care. Upon cessation of work, or upon request, Supplier agrees to promptly return all documents and other materials that contain or relate to Company Confidential Information.

7. **Licenses.** For software, documentation, and intellectual property provided under an Order but not specifically made for Company or owned by Company as work made for hire, Supplier hereby grants to Company a fully paid-up, worldwide, perpetual license to (a) install, display, perform, use, modify, reproduce, execute, distribute and create derivative works of the software, on any one or more machines and at any one or more locations, and in any number of production and non-production instances; and (b) use all intellectual property rights necessary to use the software as authorized in subparagraph (a). This license grant applies to and includes, without limitation, Company's third-party contractors and agents. These Terms apply to all software provided by Supplier regardless of the form of delivery and supersede all click wrap, shrink wrap, and other license terms included with the software or in any Supplier forms or documentation. Supplier will promptly deliver any enhancements, including modifications, revisions, corrections, updates to any software that Supplier generally makes available to its customers, including all related documentation.
8. **Breach.** Company may terminate the Order by written notice to Supplier if Supplier breaches the Order and fails to cure such breach to Company's satisfaction within 10 days of written notice specifying the breach.
9. **Payment Terms.** All payments hereunder shall be payable net sixty (60) days following Company's receipt of Supplier's invoice. Supplier will invoice Company after Delivery to Company. Any amount in dispute shall not be payable until resolution of such dispute. If Supplier is required to pay (i) sales, use, property, value-added, withholding or other taxes, (ii) any customs or other duties, or (iii) any import, warehouse or other fees, associated with the importation or delivery, then such taxes, duties or fees shall be billed to and paid by Company. If Company is permitted to declare any such taxes, Company shall declare and pay such taxes and Supplier shall not be required to invoice Company.
10. **Relationship of Parties.** All personnel furnished by Supplier shall be employees of Supplier and Supplier shall pay all salaries and expenses of such employees and shall be solely responsible for all Federal Social Security Taxes, Federal and State Withholding Taxes and unemployment Taxes and Workmen's Compensation insurance relating to such employees. The work shall be performed by the Supplier as an independent contractor. The Supplier shall have full power and authority to work without detailed control or direction by Company. The Supplier will receive directions from Company and Company's representative as to the end results to be accomplished, and the Supplier shall be responsible for determining the manner and means of accomplishing the work to be performed hereunder pursuant to good and workmanlike practices. Compliance by the Supplier with safety practices or orders issued by Company or Company's representative shall not affect the Supplier's status as an independent contractor and shall not relieve the Supplier of its obligations under these Terms or an Order.
11. **Limitation of Liability.** IN NO EVENT SHALL CUSTOMER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The aggregate and cumulative liability of Company for direct and proven damages hereunder shall in no event exceed the amount of fees paid by Company under this Agreement or \$10,000, whichever is lesser.
12. **Indemnification.** The Supplier assumes all liability for and agrees to defend, indemnify and hold Company, its employees, agents and subsidiaries (collectively, the "Company Indemnitees"), harmless from and against all demands and any liability sought to be imposed upon Company Indemnitees, of whatsoever character, whether direct or indirect, provided that the liability arises from Supplier's or its employees' negligence or misconduct. Supplier further assumes all loss, damage, costs, and expense, including all attorney's fees, incurred by Company Indemnitees arising from or in any way connected with the Supplier's or its employees' negligence or misconduct hereunder, including without limitation, bodily injury, sickness and/or disease, including death at any time resulting from such bodily injury, sickness and/or disease sustained by any person while in, on or about Company's premises, if or where such injury, sickness, disease and/or death arose out of or was in any way connected with the negligence or misconduct of Supplier or its employees; and damage to property of the Company, Supplier, or others arising out of or incident to Supplier's or its employees' negligence or misconduct.  
  
Supplier shall defend, indemnify, release and hold harmless the Customer Indemnitees from and against any loss, damage, injury, liability, demands and claims, and pay any settlements and judgments against the Company Indemnitees, arising out of alleged or actual infringement (whether or not the alleged infringement is joint or indirect) of patent rights, trademark, copyrights or alleged misuse of trade secret information, by the whole or any portion of the Purchases.

13. **Insurance.**
  - a. Supplier will procure and maintain, at its sole cost and expense, the following types of insurance and amounts of insurance:

- i. Commercial automobile liability insurance: (including owned, non-owned and hired vehicles) with minimum limits of not less than \$1,000,000.00 per occurrence combined single limit for personal injury and property damage.
    - ii. Commercial general liability insurance: including blanket contractual liability and coverage for products and completed operations with minimum limits of liability of not less than \$1,000,000 per occurrence.
    - iii. Workers compensation and Employers Liability Insurance: in accordance with statutory requirements of jurisdiction where work is being performed with Employers' Liability Limits not less than \$1,000,000.
    - iv. Professional liability where applicable in an amount not less than \$1,000,000 per claim.
  - b. Company shall be included as additional insured with respect to General Liability, Product Liability, and Automobile Liability and all policies including Workers' Compensation shall be endorsed with a waiver of subrogation in favor of Company. Policies shall be issued by insurance companies that are qualified to do business in the state where work is performed and shall have an A.M. Best rating of at least A. Supplier shall provide certificate of insurance to Company evidencing the required insurance. It is specifically agreed that the types and amounts of insurance required herein shall not limit or otherwise affect Supplier's liability or obligation to indemnify and hold Company harmless as provided by the indemnification provisions of these Terms.
- 14. Compliance with Law.** The Supplier shall obtain all necessary permits and licenses, with the exception of permits and licenses that are required to be in Company's name. The Supplier shall pay all fees and taxes required by law and shall comply with all applicable laws, ordinances, governmental rules and regulations.
- 15. Job Safety.** The Supplier shall abide by all applicable safety and health rules, including compliance with the Occupational Safety and Health Act.
- 16. Assignment and Sub-Contracting.** The Supplier shall not assign or sub-contract any part of this contract without the written consent of Company, nor shall the Supplier assign any monies due or to become due to it hereunder without the written consent of Company. This contract shall not be transferable by operation of law.
- 17. Non-Exclusivity/Volume Commitments.** There are no commitments by Company to Supplier of exclusivity in dealing, preferred vendor status, revenue generation, volume usage, purchase quantities or otherwise.
- 18. Governing Law/Jurisdiction.** The Terms and all matters arising out of or relating to the Purchases shall be governed by the laws of the State of Kansas, excluding its conflict of law provisions. Any dispute regarding the Terms shall be subject to the exclusive jurisdiction of the applicable court in Johnson County, Kansas and each party submits to the jurisdiction of such courts.
- 19. Changes to Terms of Service.** These Terms are subject to occasional revision, and if Company makes any material changes it will post notice of the changes [insert location of notice]. These changes will be effective immediately. Continued fulfillment of Purchases and/or Orders following notice of such changes shall indicate Supplier's acknowledgement of such changes and agreement to be bound by the any revision of these Terms.
- 20. Entire Agreement.** These Terms constitute the entire agreement between Supplier and Company regarding Company's Purchases and Orders from Supplier. Company's failure to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles of the Terms are for convenience only and have no legal or contractual effect. The word "including" means including without limitation. If any provision of these Terms is deemed to be illegal or unenforceable, the remainder of the Terms shall be unaffected and shall continue to be fully valid, binding, and enforceable.