

Purchase Order Terms and Conditions

These Purchase Order Terms and Conditions ("Terms") are the only terms governing the purchase of goods and/or services by J.S. McCarthy Co., Inc. or its subsidiaries, affiliates and related companies (together, the "Buyer") from the seller (the "Seller") named on the Purchase Order ("PO") on the reverse side of these Terms. "Goods" refers to those goods described in the PO and "Services" refers to the services described in the PO.

1. **Acceptance.** The PO and these Terms constitute the entire agreement ("Agreement") between the parties and supersede all prior or contemporaneous understandings or agreements, whether written or oral. These Terms prevail over any of Seller's terms and conditions, which are expressly rejected. By signing or accepting the PO or beginning performance under it, Seller accepts these Terms.
2. **Delivery of Goods/Services.** Time is of the essence. Seller shall deliver the Goods at the price, in the quantities and on the date(s) specified in the PO or as otherwise agreed in writing by the parties (the "Delivery Date"). If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Seller. Seller shall deliver all Goods to the address specified in the PO. Seller shall provide the Services as described in, at the price in and in accordance with the schedule set forth in the PO.
3. **Shipping Terms.** Unless otherwise stated in the PO, shipping shall be FOB Delivery Point. All shipping documents, invoices and related documentation pertaining to this PO will contain the PO number.
4. **Inspection of Goods.** Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may reject all or any portion of Goods it determines to be nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer may: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement thereof. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming or defective Goods and pay all related expenses. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause.
5. **Price.** Unless otherwise stated in the PO, the price for the Goods and/or Services includes all packaging, transportation costs, duties and all applicable taxes except sales tax. The price is firm and no escalation is effective without Buyer's prior written consent.
6. **Payment Terms.** Buyer will submit payment for properly invoiced and undisputed amounts within the time set forth in Seller's invoice which shall be no less than 30 days from the invoice date. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.
7. **Services.** With respect to the provision of Services, Seller shall at all times comply with all rules, regulations and policies of Buyer including without limitation, all IT and data security, building security, health, safety and environmental procedures.
8. **Warranty.** Seller warrants to Buyer that the Goods will: (i) be free from any defects in workmanship, material and design; (ii) conform to applicable specifications; (iii) be merchantable; (iv) be free and clear of all liens, security interests or other encumbrances; and (v) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment. Seller warrants to Buyer that the Services will be performed in a good and workmanlike manner in accordance with the highest industry standards for similar services. The warranties set forth in this Section are cumulative and in addition to any other warranty provided by law or equity. If Buyer gives Seller notice of noncompliance, Seller shall, at its own cost and expense, promptly (i) replace or repair the defective or nonconforming Goods and pay for all related expenses, or (ii) repair or re-perform the applicable Services.
9. **Indemnification.** Seller shall defend, indemnify and hold harmless Buyer and its successors or assigns and directors, officers, shareholders and employees against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including attorney and professional fees arising out of or in connection with (a) the Goods and Services purchased from Seller, (b) Seller's negligence, willful misconduct or breach of the Terms, or (c) any claim that Buyer's or indemnitee's use or possession of the Goods or Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party.
10. **Limitation of Liability.** BUYER SHALL NOT BE LIABLE TO SELLER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) RESULTING FROM BUYER'S PERFORMANCE OR ANY FAILURE TO PERFORM HEREUNDER INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR BENEFITS, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
11. **Confidentiality.** All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, documents, data, business operations, lists, customer information, pricing, discounts or rebates, disclosed by Buyer to Seller, whether accessed or disclosed orally or in written, electronic or other form, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer's request, Seller shall promptly return or destroy all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section.
12. **Termination.** Buyer may terminate this Agreement with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods or the seller's delivery of the Services, if Seller has not performed or complied with any of these Terms, in whole or in part. Upon termination, Seller's sole remedy is payment for the Goods received and accepted and Services accepted by Buyer prior to the termination.
13. **Assignment.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any attempted assignment shall be void. No assignment or delegation shall relieve Seller of any of its obligations hereunder.
14. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
15. **Governing Law; Venue.** This Agreement and all matters relating to it shall be governed by the laws of the State of Maine without regard to its conflicts of law principles.
16. **Notice.** All notices and other communications hereunder shall be in writing, addressed to the parties at the addresses set forth on the PO, or to such other address that may be designated by a party in writing. All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Notice is effective only upon receipt of the receiving party in compliance with this section.
17. **Miscellaneous.** Seller shall comply with all applicable laws, regulations and ordinances. Seller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. No change to the Agreement is effective unless in a writing signed by both parties hereto. No waiver by either party of any provision of this Agreement shall be constituted as a waiver of any future obligations or rights of either party. If any term or provision of this Agreement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement, the remainder of which shall remain in full force and effect.