

## TERMS AND CONDITIONS

1) **COMPLETE AGREEMENT.** These Terms and Conditions (T&Cs) apply to any Purchase Order (PO) between the identified Vendor and DMARK, Inc. Vendor's partial or full performance shall constitute acceptance by Vendor of the PO including these T&Cs. No waiver, alteration or modification of these T&Cs shall be binding on DMARK, and any other terms and conditions requested or included in Vendor's quote, order documents or otherwise are expressly rejected by DMARK, unless expressly agreed to in a writing signed by DMARK's Authorized Representative. Any reference by DMARK to Vendor's quotation shall not be construed to accept any terms and conditions in Vendor's quotation different from or in addition to these T&Cs. Any terms and conditions in Vendor's quotation or sales documents which are in addition to or inconsistent with these T&Cs are expressly rejected and excluded.

2) **CONTRACT.** DMARK will not accept or be held responsible for goods or services delivered or performed except pursuant to these T&Cs. No modification, deviation, addition or deletion of any requirement or substitution of goods may be made, nor will any charges for extras be allowed, unless authorized in a writing signed by DMARK's Authorized Representative by change order and a change in price agreed upon.

3) **PRICE.** DMARK's net cost for each item listed shall not exceed that appearing opposite each item listed on the approved PO.

4) **SHIPMENT.** Time is of the essence in the performance of the PO, and all deliveries shall be made in strict accordance with the shipping schedules set forth on the PO. Vendor shall not increase the amount of the ordered goods, and shall not ship partial orders, without DMARK's prior written consent on a case-by-case basis. Shipments in excess of those authorized may be returned to Vendor and Vendor shall pay DMARK for all expenses incurred in conjunction with such shipments, including but not limited to packing, handling, sorting, and transportation expenses. DMARK may, from time to time, change shipping schedules specified in the PO or contained in such written instructions or direct temporary suspension of such scheduled shipment, without cost, penalty or liability to DMARK. Delivery in whole or in part shall not be made more than five (5) business days prior to the agreed delivery date or dates. On earlier deliveries, DMARK reserves the right to delay payment of invoice or to return the goods at Vendor's sole risk and expense. All shipments shall be accompanied by a detailed packing list that references the item number for each of the goods, the DMARK PO number the shipment is against, and the yield in each shipment covered by the packing list.

5) **FORCE MAJEURE.** Vendor must advise DMARK immediately upon learning of any shipment delays. DMARK may at its sole discretion require the order to be shipped by air at Vendor's sole expense; DMARK may cancel all or a portion of the delayed PO without penalty at any time prior to shipment, and Vendor shall immediately return the deposit paid for the canceled goods or services; or DMARK may purchase the goods elsewhere and Vendor agrees to reimburse DMARK's cost in excess of the cost previously agreed between DMARK and Vendor. Failure of DMARK to take any deliveries when due, if such failure arises from or is otherwise attributable to: acts of God including but not limited to earthquake, fire, flood and other natural disasters; strike or other labor disturbances; accidents; war (declared or undeclared); enemy action, civil insurrection or riot; governmental orders or regulations; pandemic, legal interferences or prohibitions; or other causes affecting DMARK's facilities beyond its control, shall not subject DMARK to any liability or damages claim.

6) **INVOICES.** Vendor shall send all invoices to DMARK, referring each invoice against the DMARK's designated PO number. Individual invoices shall be supplied for each PO number. No term or condition on or in association with any invoice that is in addition to or inconsistent with these T&Cs shall be binding on DMARK.

7) **INSPECTION & COUNT.** All goods shall be subject to inspection, count and testing at destination, notwithstanding any prior inspection or prior payment by DMARK. If any goods are defective in material or workmanship, or otherwise fail to meet specifications or warranties, DMARK shall have the option to reject for full credit or to obtain replacement conforming goods. Rejected goods will be held for Vendor's instructions or returned at Vendor's sole risk and expense. Vendor shall at DMARK's request credit DMARK's account, refund the purchase price of any such rejected goods, or promptly replace the rejected goods with non-defective, conforming goods. DMARK's count will be accepted as final and conclusive on all shipments and at DMARK's request Vendor shall promptly credit DMARK's account, refund the purchase price of the shorted goods, or promptly complete the order by delivery of additional goods.

8) **TITLE.** Delivery of the ordered goods to DMARK's designated final delivery destination by any carrier shall be deemed delivery to DMARK, and thereupon title to such goods, and risk of loss or damage, shall pass to DMARK. Any claim for shortage or shipping damage will be made in writing by DMARK within ten (10) business days after receipt of each shipment of some or all of the goods.

The goods, including all of their parts, shall remain personal property regardless of how affixed to any realty or structure.

9) **PATENTS, TRADEMARKS, DESIGNS AND COPYRIGHTS.** Vendor warrants that the goods specified herein (and their sale or use, alone or in combination, according to the manufacturer's or Vendor's specifications) will not infringe any United States or foreign patent, trademark, trade dress, design, copyright, or any other intellectual property or trade secret, and agrees to defend at Vendor's own and sole expense, indemnify and hold harmless DMARK and any person or entity selling or using any of the goods purchased by DMARK against all claims, liabilities, fees, and expenses arising from or relating to any alleged infringement.

10) **WARRANTIES.** Vendor represents and warrants that the goods: (a) will conform to the specifications, drawings, samples, requirements or other description furnished or specified by DMARK; (b) will be free from defects in material and workmanship; (c) will be merchantable and will be fit for the particular purpose intended; and (d) will be free from defects or deficiencies of any kind. Any defects that are discovered as a result of normal use or operation of the goods within twelve (12) months of the date of actual delivery to DMARK will either be replaced or repaired (at DMARK's sole discretion), at no charge. Vendor further represents and warrants that upon delivery DMARK will acquire good and marketable title thereto, free and clear of all liens and encumbrances. The warranties and remedies provided in these T&Cs shall be in addition to those implied by or available at law, and in any other warranty provided by Vendor or any manufacturer or other party, and shall exist notwithstanding the acceptance by DMARK of all or part of the goods.

11) **TERMINATION / CANCELLATION.** DMARK may terminate Vendor's work on goods or services, in whole or in part, for any reason at any time upon giving written notice to Vendor. Vendor shall reserve in all of its orders relating to the goods the right to terminate or cancel. Whether or not such right to terminate or cancel is reserved, DMARK's liability or cost arising out of terminated orders (without fault by Vendor) shall be limited to actual cost incurred by Vendor applicable to the goods ordered as of the time of termination, and shall not include any anticipated profit or other damages. DMARK reserves the right to cancel all or any part of the undelivered portion of goods or services without any liability if Vendor does not make delivery as specified within the time stated in the PO, or breaches any of these T&Cs, including the warranties.

12) **WAIVER.** The failure of DMARK at any time to require performance by Vendor of any provision in these T&Cs shall in no way affect the full right to require such performance at any time thereafter. The waiver by DMARK of a breach of any provision in these T&Cs shall not constitute a waiver of any succeeding breach of the same or any other such provision nor constitute a waiver of the provision itself. Remedies herein reserved shall be cumulative and additional to any other remedies provided by law.

13) **NON-ASSIGNMENT.** Vendor shall not assign, transfer or delegate in any manner to any other person or entity, in whole or part, the performance of any services or the supply of any goods ordered by DMARK.

14) **COMPLIANCE WITH LAWS.** Vendor hereby agrees to be responsible for and to comply with all applicable laws, regulations, and orders in connection with the performance of services and/or the manufacture and delivery of its goods ordered by DMARK. Acceptance of DMARK's order shall constitute Vendor's warranty of its full compliance with all applicable laws and regulations.

15) **APPLICABLE LAW AND BINDING ARBITRATION.** This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the state of California, including its Commercial Code, but without giving effect to the principles to conflicts of the law thereof. ALL ACTIONS, DISPUTES, CLAIMS, AND CONTROVERSIES UNDER COMMON LAW, STATUTORY LAW OR IN EQUITY, OF ANY TYPE OR NATURE WHATSOEVER, BETWEEN OR INVOLVING VENDOR AND DMARK (INCLUDING ANY ALLEGED AGENT, EMPLOYEE, OFFICER, OR OWNER OF EITHER) SHALL BE RESOLVED EXCLUSIVELY THROUGH BINDING ARBITRATION BY A RETIRED STATE OR FEDERAL JUDGE IN ORANGE COUNTY, CALIFORNIA, AND THE PREVAILING PARTY SHALL BE AWARDED ATTORNEY'S FEES, COSTS, EXPERT FEES AND ARBITRATION FEES. All court proceedings related to the arbitration shall be exclusively in Orange County, California, and the parties submit to personal jurisdiction in such courts.

**ALL RIGHTS RESERVED TO DMARK.**