



Igloo Products Corp.

Purchasing Terms and Conditions

1. Interpretation

1.1 Defined Terms

In these Terms:

"BUYER" means Igloo Products Corp.;

"CONTRACT" means the contract for the Supply of the Goods and the supply and acquisition of the Services;

"DELIVERY ADDRESS" means the address stated on the Order;

"GOODS" or "PRODUCT" means the product(s) manufactured in accordance with the exact specifications set forth in the Purchase Order, as may subsequently be modified by mutual written agreement between the parties.

"ORDER" means the Buyer's purchase order to which these Terms are annexed;

"PRICE" means the price of the Goods and/or the charge for the Services;

"SELLER" means the person so described in the Order;

"SERVICES" means the services (if any) described in the Order;

"SPECIFICATION" includes any plans, drawings, data or other information relating to the Goods or Services;

"TERMS" means the standard terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

"WRITING", and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2 Statutory References

Any reference in these Terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 Headings

The headings in these Terms are for convenience only and shall not affect their interpretation.

2. Basis of Purchase

(a) The Order constitutes an offer by the Buyer to purchase the Goods/Products and/or acquire the Services subject to these Terms and the Contract.

(b) These Terms shall apply to the Contract and to any Order to the exclusion of any other terms on which any quotation has been given to the Buyer or subject to which an Order is accepted or purported to be accepted by the Seller.

(c) **Purchase orders shall be deemed accepted unless Seller notifies Igloo of rejection of any purchase order within five (5) working days of receipt of such order.** Acceptance of the Order may be made by signing and returning the attached acknowledgement copy hereof, by other express acceptance, or by shipment of Goods or delivery of Services hereunder. If Seller uses its own order acknowledgement or other form to accept the Order, it is understood that said form shall be used for

convenience only and any terms or conditions contained therein inconsistent with or in addition to those contained herein shall be of no force or effect whatsoever between the parties hereto.

(d) No variation to the Order or these Terms shall be binding unless agreed in Writing between the authorized representatives of the Buyer and the Seller.

3. Specifications

(a) The quantity, quality and description of the Goods and the Services shall, subject as provided in these Terms, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.

(b) Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer, and the Seller assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property for no further consideration, subject only to the payment of the Price. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

(c) The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

(d) The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to shipment, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.

(e) If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

(f) The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

4. Prices

(a) The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:

(i) Exclusive of any applicable franchise taxes, sales or use taxes (which shall be payable by the Buyer); and

(ii) Inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax, compliance with all applicable laws, passing of regulatory testing, fulfilling prototype, sample and production start up schedules, and developing, manufacturing, labeling and shipping Product in compliance with applicable international, federal, state and local laws, codes, rules, regulations, orders and ordinance.

The Seller shall be responsible for all other taxes, assessments, permits and fees, however designated, that are levied upon the Contract, the Order or the Goods and Services, except for taxes based upon the income of the Buyer. No taxes of any type shall be added to invoices without the prior approval of the Buyer in Writing.

(b) No increase in the Price may be made (whether on account of increased material, labor or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.

(c) The Seller will give the Buyer the benefit of any Price reduction occurring before the specified delivery date or the actual delivery date, which is later. The Seller warrants that the Price for the Goods is not less favorable than the price currently extended to any other customer of the Seller for the same or similar articles in similar quantities.

(d) The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms of sale or provided for in the Contract.

(e) Supplier may incur certain non-recurring expenditures for product development, design and engineering of Product, and equipment, fixtures, tooling, software programs and other expenses in connection with the manufacture of certain Products (the "Non-Recurring Expenses"). Supplier shall obtain the written approval of Igloo prior to incurring any Non-Recurring Expenses. Igloo agrees to reimburse Supplier for all previously approved Non-Recurring Expenditures by issuing a Purchase Order for all such equipment, fixtures, tooling, software programs and other expenses upon thirty (30) days of receiving Supplier's invoice for same. Supplier shall use its best efforts to utilize existing equipment; fixtures, tooling and software programs in order to minimize or avoid Non-Recurring Expenses. All equipment, fixtures, tooling, software programs, designs, prototypes, drawings and other services purchased by Igloo pursuant to a Purchase Order shall become the sole and exclusive property of Igloo and Igloo shall own all rights, and title to, and all and interests in such equipment, fixtures, tooling, designs, prototypes, drawings and software programs, and all such software shall be deemed "works made for hire".

5. Terms of Payment

(a) The Seller may invoice immediately after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order. The Seller shall invoice in duplicate. Originals of all invoices, government and commercial bills of lading and air express receipts shall be sent via [~ description ~] to the Buyer at 1001 W. Sam Houston Parkway, Houston, TX 77043. Packing slips must be included in all shipments and copy with final shipment must state "Order Completed". shipment has been made. All invoices must be supported by proof of shipment. Show cash discount on face of invoice.

(b) Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services within 30(thirty) days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer.

(c) The Buyer may set off against the Price any sums owed to the Buyer by the Seller.

(d) Quantities: The specific quantity ordered must be delivered in full and not be changed without Buyer's consent in writing. Any unauthorized quantity shipped by Seller is subject to Buyer's rejection and return at Seller's expense.

6. Delivery and Acceptance

(a) The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.

(b) Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.

(c) The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

(d) Packing slips must accompany each case, parcel or container, showing the Buyer's order number, item number, and a complete description of its contents.

(e) If the Goods are to be delivered, or the Services are to be performed, by installments, the Contract will be treated as a single contract and not severable.

(f) The Buyer may reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

(g) The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.

(h) The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.

(i) If the Goods are not delivered or the Services are not performed on the due date then, without limiting any other remedy, the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damage for delay an amount equal to two-tenths of one percent (0.2%) of the Compensation for such delayed Product(s) for each day for which the Product is delayed, up to a maximum aggregate amount of five per cent (5%) of the aggregate Compensation for the applicable Purchase Order. In addition, the Buyer reserves the right to return any or all Goods in unopened original packing to the Seller if delivered to the Buyer more than [~ number ~] days after the due date.

7. Risk of Loss

(a) Risk of damage to or loss of the Goods shall pass to the Buyer on delivery to the Buyer in accordance with the Contract.

8. Warranties and Liability

(a) The Seller warrants to the Buyer that the Goods and their packaging and labeling shall be in merchantable condition and shall be free from defects in design, material and workmanship for a period of Five (5) years from the date that Igloo (or Igloo's customer, as applicable) accepts such Product, and all Products will conform to the specifications and requirements set forth in the applicable Purchase Orders, as may be amended from time to time as herein provided.

(b) The Seller warrants that the Goods shall be fit for such particular purposes and uses, if any, as specified by the Buyer or otherwise known to the Seller or held out by Seller and shall comply with all statutory requirements and regulations relating to the sale of the Goods.

(c) The Seller warrants that the Goods shall be free and clear of any lien or other adverse claim against title.

(d) The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.

(e) All warranties contained herein shall survive inspection, test, delivery, acceptance and payment by the Buyer.

(f) Without limiting any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:

(i) To require the Seller, without expense to the Buyer, to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 60(Sixty) days; or

(ii) Upon receipt of such repaired or replacement Products, Igloo shall, no later than thirty- (30) days from such receipt, notify Seller in writing of any Defective Products. The event that any repaired or replacement Product is found to be defective, then Igloo may either (i) ship such Products back to Seller as provided above, or (ii) terminate this Agreement upon five (5) days written notice to Seller.

(g) The Seller's warranties (and any consumer warranties, service policies or similar undertakings of the Seller) shall be enforceable by the Buyer's customers and any subsequent owner or operator of the Goods as well as by the Buyer.

9. Order Cancellation and Contract Termination

(a) Igloo may, upon sixty (60) days written notice to Seller, without penalty: (i) reschedule any Scheduled Delivery Date, (ii) change any Delivery Point or (iii) cancel all or part of any Purchase Order. However, Igloo agrees to pay Seller for accrued expenses through date of cancellation so long as cancellation is not due to Seller's breach of any terms or conditions of this agreement.

10. Miscellaneous

(a) The Order is personal to the Seller and the Seller shall not have the right to assign or otherwise transfer its rights and obligations under this Agreement except with the prior written consent of Igloo. Any prohibited assignment shall be null and void. This Agreement shall inure to the benefit of and shall be binding upon Igloo's successors and assigns.

(b) Notices shall be given by registered or certified air mail, postage prepaid, addressed to the respective addresses of the parties as first above written or at such other addresses as the respective parties may designate by like notice from time to time. Notices may also be given by e-mail or facsimile, provided a confirmation copy is also sent by mail in the form specified herein above. Notices shall be effective upon (a) receipt by the party to which notice is given, or (b) on the tenth (10th) day following the date such notice was posted, whichever occurs first.

(c) No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

(d) If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

(e) The Contract, these Terms, the Order and any other documents mentioned herein constitute the entire agreement between the parties on this subject.

(f) Any dispute arising under or in connection with these Terms or the sale of the Goods shall be referred to arbitration in accordance with the Contract.

(g) Any interpretation or construction of this agreement shall be based solely on the English language. This Agreement will be performed in whole or in part in Houston, Harris County, Texas. Except to the extent governed by the Lanham Act ([15 U.S.C. §§1051](#) et seq.), this Agreement shall be interpreted and controlled by, construed and enforced according to the substantive laws of the State of Texas, without regard to its conflicts of laws provisions. Any suit in relation to this agreement will be brought in Harris County, Texas, and each Party agrees that said Courts have the sole and exclusive jurisdiction over any and all disputes and causes of action between Igloo and Supplier or between any other person or entity and Supplier.

(h) The Equal Opportunity Clauses required by 41 CFR 60-250.4 and 41 CFR 741.4 are part of this purchase order and binding upon the Seller (Subcontractor, Vendor, or Supplier) unless exempted by the rules, regulation or orders of the Secretary of Labor.