



EMW Standard Terms & Conditions

This Purchase Order together with any specifications, scope of work, additional provisions or other documents referenced herein or attached hereto (hereinafter referred to as "AGREEMENT") is the exclusive AGREEMENT between EMW, Inc. (hereinafter referred to as "Buyer") and Supplier for the deliverables, products and services ("Work") listed in this AGREEMENT. If this AGREEMENT is issued under a written procurement agreement, then the provisions of that agreement will govern.

This AGREEMENT is Buyer's offer to Supplier to purchase the goods or services described herein. Acceptance of this AGREEMENT shall take place, at the election of Buyer, by either Supplier's written acceptance or by beginning performance of the work. Buyer expressly limits acceptance to the terms stated herein. Any additional or different terms set forth in any documents other than those referenced here, including Supplier's proposal, quotation, terms and conditions or invoice, are hereby rejected and shall not be binding or effective unless expressly agreed to by Buyer in writing.

1. DEFINITIONS

1.1 "Deliverables" means the deliverables specified in the AGREEMENT to be delivered on or before the Delivery Date.

1.2 "Delivery Date" means the date or dates specified in the AGREEMENT by which the Supplier is required to deliver the Work.

1.3 "Intellectual Property Rights" means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

1.4 "Products" means tangible goods specified in the AGREEMENT to be delivered on or before the Delivery Date.

1.5 "Services" means the services that Supplier is to perform for Buyer specified in the AGREEMENT or incorporated by the Buyer in the form of a referenced attachment.

1.6 "Subcontractor" means a third party performing Work under an agreement (a "Subcontract") with Supplier.

1.7 "Supplier Personnel" means Supplier's employees, consultants, agents, independent contractors and Subcontractors.

1.8 "Third Party Intellectual Property" means the Intellectual Property Rights of a third party which Supplier uses or incorporates into the Work.

1.9 "Work" means the Deliverables, Products and Services specified in the AGREEMENT.



2. DELIVERY

2.1 Time is of the essence in Supplier's performance of its obligations under Section 2 of the AGREEMENT. Supplier will immediately notify Buyer if Supplier's timely performance under the AGREEMENT is delayed or is likely to be delayed. Buyer's acceptance of Supplier's notice will not constitute Buyer's waiver of any of Supplier's obligations.

2.2 If Supplier delivers Work after the Delivery Date, Buyer may reject such Work.

2.3 Unless Buyer expressly instructs otherwise, Supplier will deliver all Work to Buyer's headquarters at the address set forth in the AGREEMENT. Seller assumes responsibility for all shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance.

3. PRICE AND PAYMENT

3.1 Unless otherwise specified in the AGREEMENT, the price for the Work includes all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imports and government-imposed surcharges. Supplier will, at Buyer's request, break-out from the price all such taxes and other charges, in its invoices. Supplier shall use its best efforts to assist Buyer in all legal efforts to minimize the taxes resulting from the performance of this AGREEMENT.

3.2 Buyer will pay Supplier the price in accordance with the payment terms set forth in the AGREEMENT following the later of: (i) the Delivery Date; (ii) the date of Buyer's acceptance of all of the Work; or (iii) Buyer's receipt of a properly prepared invoice. A properly prepared invoice must include the AGREEMENT number and, if required in the AGREEMENT, Supplier's certification of conformance of the Work to the requirements. Payment will be in the currency of the country in which the Buyer entity or affiliate identified in the AGREEMENT is located, and if the price set forth in the AGREEMENT is not in the local currency, then Buyer will determine the local currency equivalent of the price as of date of payment. Buyer may, at any time, set-off any amounts Supplier owes Buyer against any amounts Buyer owes to Supplier or any of its affiliated companies. All service charges shall be upon completion and acceptance by the Buyer, payment terms are identified in Buyer's AGREEMENT.

4. OWNERSHIP AND LICENSE

4.1 Buyer is the sole and exclusive owner of all Deliverables. Supplier irrevocably assigns and transfers to Buyer all of its worldwide right and title to, and interest in, the Deliverables, including all associated Intellectual Property Rights.

5. INSPECTION AND ACCEPTANCE

5.1 Buyer may reject any or all of the Work which does not conform to the applicable requirements within 10 business days of Supplier's delivery of the Work. At Buyer's option, Buyer may (i) return the non-conforming Work to Supplier for a refund or credit; (ii) requires Supplier to replace the non-conforming Work; or (iii) repair the non-conforming Work so that it meets the requirements. As an alternative to (i) through (iii), Buyer may accept the non-conforming Work conditioned on Supplier providing a refund or credit in an amount Buyer reasonably determines to represent the diminished value of the non-conforming Work. Buyer's payment to Supplier for Work prior to Buyer's timely rejection of such Work as non-conforming will not be deemed as acceptance by Buyer.

6. CHANGES

6.1 As used in this Section 6, "Change" means a change Buyer directs or causes within the general scope of this Agreement, the applicable SOW or both.

6.2 Buyer, by written order ("Change Order"), may make Changes in accordance with this Section 6.



6.3 If Supplier asserts that Buyer has directed or caused a Change to the cost of or time for performance for which Buyer has not issued a Change Order, Supplier will promptly notify Buyer in writing of the Change, providing (i) a description of the action or inaction asserted to have caused the Change; (ii) an estimate of the equitable adjustment that would be required for Supplier to perform the Changed Work; and (iii) a date no less than 30 days from the date of notice by which Buyer must respond to Supplier's notice so that Supplier may proceed with the Work unchanged. Buyer will evaluate Supplier's notice of Change in good faith, and if Buyer agrees that it has made a constructive change, Buyer will issue a Change Order to Supplier.

6.4 The parties shall negotiate an amendment to the applicable SOW to incorporate a Change Order providing for an equitable adjustment to the price, time for performance, or both.

7. WARRANTY

7.1 In addition to any other warranties specified herein or provided by the Supplier, Supplier warrants that:

1) The services provided through this AGREEMENT shall be performed with that degree of skill and judgment normally exercised by professional firms performing services of the same or substantially similar nature; and 2) that any goods delivered under this AGREEMENT will be new, unless otherwise specified and following acceptance be free from defects in design, material and workmanship. All goods and services will conform to applicable specifications, drawings, and standards of quality and performance. In the event of any breach of the foregoing warranties, Supplier shall, at its own expense, at Buyer's election either: (i) re-perform the non-conforming services and/or correct the non-conforming goods to conform to this standard; or (ii) refund to Buyer that portion of the amounts received by Supplier attributable to the non-conforming services and/or goods. All warranties of Supplier shall inure to the benefit of both Buyer and Buyer's customers. The foregoing warranties shall survive any delivery, inspection, acceptance or payment by Buyer.

8. ASSIGNMENT AND SUBCONTRACTING

8.1 Supplier may not assign any of its rights or delegate any of its obligations under the AGREEMENT without Buyer's prior written consent, which Buyer will not unreasonably withhold. Buyer may, at its option, void any attempted assignment or delegation undertaken without Buyer's prior written consent.

8.2 Supplier may not subcontract any of its rights or obligations under the AGREEMENT without Buyer's prior written consent. If Buyer consents to the use of a Subcontractor, Supplier will: (i) guarantee and will remain liable for the performance of all subcontracted obligations; (ii) indemnify Buyer for all damages and costs of any kind, subject to the limitations in Section 11 (Indemnity and Insurance), incurred by Buyer or any third party and caused by the acts and omissions of Supplier's Subcontractors' and (iii) make all payments to its Subcontractors. If Supplier fails to timely pay a Subcontractor for work performed, Buyer will have the right, but not the obligation, to pay the Subcontractor and offset any amount due to Supplier by any amount paid to the Subcontractor. Supplier will defend, indemnify and hold Buyer harmless for all damages and costs of any kind, without limitation, incurred by Buyer and caused by Supplier's failure to pay a Subcontractor.

9. TERM AND TERMINATION

9.1 The AGREEMENT will remain in effect with respect to any SOW already issued prior to expiration of the term of the AGREEMENT until such SOW is either terminated or the Work is completed and accepted.

9.2 Buyer may terminate this AGREEMENT, any SOW, or both at any time, for no reason or for any reason, upon 15 days written notice to Supplier. Upon receipt of notice of such termination, Supplier will inform Buyer of the extent to which it has completed performance as of the date of the notice, and



Supplier will collect and deliver to Buyer whatever Work then exists. Buyer will pay Supplier for all Work performed and accepted through the effective date of the termination, provided that Buyer will not be obligated to pay any more than the payment that would have become due had Supplier completed and Buyer had accepted the Work. Buyer will have no further payment obligation in connection with any termination.

9.3 Buyer may immediately terminate the AGREEMENT upon written notice to Supplier if there is a change in ownership representing 20 percent or more of the equity ownership of Supplier, if the Supplier becomes debarred by the Federal Government or any State Government, or if the Supplier is in default of this AGREEMENT.

10. NOTIFICATION OF DEBARMENT/SUSPENSION

10.1 By acceptance of this AGREEMENT either in writing or by performance, Supplier certifies that as of the date of award of this AGREEMENT neither Supplier, nor any of Supplier's principals, is debarred, suspended, or proposed for debarment by the Federal Government or any State Government. Further, Supplier shall provide immediate written notice to Buyer in the event that during the performance of this AGREEMENT Supplier or any of Supplier's principals is debarred, suspended, or proposed for debarment by the Federal Government or any State Government.

11. IDEMNITY AND INSURANCE

11.1 Supplier shall defend, indemnify and hold harmless Buyer from any claims, suits, judgments, fees and costs (including attorney's fees) based on or arising out of the Supplier's products, services and/or the resale or use of the products purchased hereunder including death, personal injury, or damage to property.

11.2 Supplier will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect Buyer in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries and disease suffered in connection with employment. Supplier further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Supplier in the jurisdiction or jurisdictions in which Supplier's operations take place.

12. LIMITATION OF LIABILITY:

12.1 NOTWITHSTANDING ANYTHING ELSE IN THE AGREEMENT OR OTHERWISE, BUYER WILL NOT BE LIABLE TO SUPPLIER WITH RESPECT TO THE SUBJECT MATTER OF THE AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS IN THE AMOUNT BUYER PAID TO SUPPLIER IN THE SIX MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.

12.2 IN NO EVENT WILL BUYER BE LIABLE TO SUPPLIER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THE AGREEMENT, WHETHER OR NOT BUYER WAS ADVISED OF THE AGREEMENT'S LIABILITY OF SUCH DAMAGE.

13. COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS:

13.1 Supplier agrees that it and its employees who work under this AGREEMENT will comply, and assist Buyer in complying with, the laws unique to performing on government contracts, including without limitation, the following statutes and regulations: 31 U.S.C. 1352, relating to the limitation on the use of appropriated funds to influence certain Federal contracts; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 423, Procurement Integrity Act; and 48 C.F.R. Subpart 9.5, relating to conflicts of interest; and 29 CFR Part 471, including the posting of the employee notice prescribed at 29 CFR Part 471, Appendix A to



Subpart A. Supplier represents and warrants that any information it discloses to Buyer does not violate any law, regulation or ordinance of any U.S. Federal, state or local governmental authority regarding the integrity of the procurement process or the use of classified documents. Supplier also agrees not to offer or give gifts on behalf of Buyer to third parties, including without limitation, U.S. government employees and officials.

13.2 Federal and public sector: For work performed under specific U.S. government procurement contracts the following provisions apply:

- 48 C.F.R 52.222-26, Equal Opportunity (Apr. 1984)
- 48 C.F.R. 52.222-35 Affirmative Action for Special Disabled and Vietnam ERA Veterans (Apr. 1984) (If for \$10,000 or more)
- 48 C.F.R. 52.222-36, Affirmative Actions for Handicapped Workers (Apr. 1984) (if in excess of \$2,500)
- 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)
- 52.228-7 Insurance—Liability to Third Persons
- 52.228-5 Insurance—Work on a Government Installation.
- 52.229-3 Federal, State, and Local Taxes
- 52.237-2 Protection of Government Buildings, Equipment, and Vegetation
- 52.245-1 Government Property.

These provisions have the same force and effect as if they were stated in their full text.

To the extent permitted by local law in no event will Buyer (including Buyer's parent, subsidiaries or other related legal entities) be liable for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages.

14. ATTORNEY'S FEES

14.1 In the event suit is brought or an attorney is retained by Buyer to enforce the terms of this AGREEMENT, Buyer shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees (including, without limitation, the allocable costs of in-house council), court costs, costs of investigation and other related expenses incurred in connection herewith.

15. GOVERNING LAW

15.1 The AGREEMENT will be construed in accordance with, and all disputes will be governed by, the laws of the State of Virginia, without regard to its conflict of laws rules. Supplier irrevocably consents to the personal jurisdiction of the state and federal courts in and for Fairfax County, Virginia, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.