



TERMS AND CONDITIONS

FOR TIME AND MATERIAL PURCHASE ORDERS

1. DEFINITIONS

“Seller” means the person or entity that receives this Order from Buyer to perform the Work. “Buyer” means Mesa Associates, Inc., an Alabama corporation. “Order” means the attached time and materials purchase order issued by Buyer to Seller, together with the Terms and Conditions contained herein. “Work” means all required labor, articles, materials, supplies, goods and services required to be provided by Seller to Buyer pursuant to the Order.

2. ACCEPTANCE

Acceptance of this Order by Seller may be made by returning a signed copy of the Order or by partial performance hereunder, and any such acceptance shall constitute agreement to all terms and conditions set forth herein, unless otherwise modified in writing by the parties. Except as otherwise provided herein, the terms set forth herein integrate, merge, and supersede any prior offers, negotiations, and agreements concerning the subject matter hereof and, together with the other information contained in the Order, constitute the entire agreement between the parties. Additional or different terms and conditions proposed by the Seller in accepting this Order shall be deemed rejected by Buyer and shall not be binding upon Buyer unless accepted in writing by Buyer, and except as set forth herein, no other addition, alteration or modification to, and no waiver of any of the provisions herein contained shall be valid unless made in writing and executed by Buyer and Seller.

3. TERM OF AGREEMENT

The term of this Agreement is _____ through _____ unless amended in writing by mutual agreement of both parties. Seller is not obligated to continue work or provide services and Buyer is not obligated to compensate Seller for expenses incurred or commitments made before or after these dates.

4. GENERAL RELATIONSHIP

The Seller is not an employee of Mesa for any purpose whatsoever. Seller agrees that in all matters relating to this Order it shall be acting as an independent contractor and shall assume and pay all liabilities and perform all obligations imposed with respect to the performance of this Order. Seller shall have no right, power, or authority to create any obligation, expressed or implied, on behalf of Buyer and/or Buyer’s customers and shall not represent Buyer as an agent. Personnel supplied by Seller to perform the Work shall be deemed employees of Seller for all purposes, and shall not, for any purpose (including, without limitation, for employee benefits or compensation purposes), be considered employees or agents of Buyer.

5. CONFLICT OF INTEREST

Seller shall exercise reasonable care and diligence to prevent any actions or conditions, which could result in a conflict with Buyer's best interests. This obligation shall apply to the activities of Seller's employees and agents in their relations with Buyer's employees, their families, vendors, subcontractors, and third parties arising from this Agreement and accomplishing work hereunder.

6. CHANGES

Buyer may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Order in any one or more of the following: (i) description of Work to be provided; (ii) applicable Specifications; (iii) method of shipping or packing; (iv) place of inspection, acceptance, or point of delivery; (v) time of performance; and (vi) place of performance. If any such change causes a change in the labor mix, cost, or the time required for performance of any part of this Order, Seller may request an equitable adjustment in the stated price and/or delivery schedule by delivering written notice to Buyer within three (3) days of the applicable change. Any such equitable adjustment is subject to Buyer’s approval, in its sole discretion, however, Seller shall proceed without delay in the performance of the Order, as changed.

7. SUBCONTRACTS AND ASSIGNMENTS

Neither this Order, nor any portion hereof, shall be assigned, subcontracted, or delegated without Buyer’s prior written consent. Any such attempted assignment shall be void without Buyer’s consent.



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8. LABOR RATES

Seller's hourly labor rates as set forth on the Order shall be in effect for the duration of this Order, unless otherwise modified by the parties in writing. Hours in excess of forty (40) per week shall be invoiced at the same hourly rate, however, Buyer must approve all overtime hours in advance.

9. PAYMENT

One (1) invoice shall be submitted upon completion of work and shall be paid 30 days after receipt of such invoice, unless the Work is rejected prior to such time. Payment shall not constitute final acceptance of the items and or services ordered in the Order. Seller shall refund to Buyer in full any payments delivered to Seller for Work not accepted after such delivery. Invoices shall be submitted via email to ap@mesainc.com and cambrose@mesainc.com.

10. DELIVERY

Time is of the essence in this Order. The date specified for delivery or performance is the required delivery date at Buyer's specified location unless otherwise specifically noted herein. Whenever Seller has knowledge that any actual or potential issue, event, or circumstance is delaying or threatens to delay the timely performance of this Order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer. Work shall not be supplied in excess of the quantities or deliverables specified in the Order. Seller shall be liable for handling charges and return shipment costs for any excess quantities. Seller shall deliver to Buyer any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for any portion of this Order which is terminated prior to final delivery.

11. PROPERTY

Buyer may furnish property owned by either Buyer or Buyer's customer(s) for Seller's use in performing the Work. Title to such furnished property shall remain in Buyer, or its customer, as applicable. Seller shall use reasonable care to maintain such furnished property in good working order. Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify Buyer of, any loss or damage of such furnished property.

12. INDEMNIFICATION

Seller agrees to indemnify and hold harmless Buyer from and against any and all liabilities, costs and expenses (including reasonable attorneys' fees, arbitration and court costs) (collectively, "Liabilities") for: (i) injury to persons or damage to or loss of property to the extent caused by the negligent act or omission of Seller, or Seller's lower-tier subcontractors, agents or employees; (ii) defects in the Work or delays in performing the Work; or (iii) Seller's breach of this Agreement. Notwithstanding the foregoing, Seller shall not be liable for injury to persons or damage to or less of property caused by the sole negligence of Buyer, its subcontractors, agents or employees.

Buyer shall promptly notify Seller of any claim, demand or action which is covered by this indemnification provision and shall authorize representatives of Seller, using counsel reasonably acceptable to Buyer and at Seller's sole cost and expense, to settle or defend any such claim, demand or action and to represent Buyer in, or to take charge of, any litigation or arbitration in connection therewith. Notwithstanding the preceding sentence, Seller shall not enter into any settlement agreement without Buyer's prior written consent.

13. INSPECTION; WARRANTY

All Work performed shall be subject to inspection and approval by Buyer, its agents and its customers at all times and places. Seller warrants that the Work shall conform to applicable specifications, drawings, directions, samples, descriptions and other requirements of this Order, as issued or approved by Buyer (collectively, the "Specifications"). Seller further warrants that the Work shall not infringe upon any patent, copyright, trademark or other intellectual property right held by any third party. This warranty shall begin upon final acceptance of such Work and shall continue for a period of **one (1)** year, except with respect to Seller's warranty of non-infringement, in which case the warranty shall continue indefinitely. In the event the Work does not conform to such Specifications, Buyer may require prompt correction or re-performance of the Work at Seller's sole expense. If Seller is unable to correct the non-conforming Work, Buyer may procure replacement Work from another source and charge to all costs, expenses and damages associated therewith to Seller. Buyer's approval of Seller's designs shall not relieve Seller of its obligations hereunder. All warranties run to Buyer and its customers.



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14. PROPRIETARY INFORMATION, PROPERTY, TOOLS, MATERIALS, ETC.

Seller shall not disclose any of Buyer's confidential, proprietary or trade secret information of Buyer, whether of a technical, business or other nature (including, without limitation, information related to the Work, or Buyer's or Buyer's customer's technology, software, products, services, designs, methodologies, business plans, finances, marketing plans, customers, prospects or other affairs) Proprietary Information to any third party, unless such disclosure is necessary for the performance of this project and is approved by Buyer in advance. No news releases, public announcement, denial, or confirmation of any part of the subject matter of this Agreement or any phase of any project hereunder shall be made without prior written consent of Buyer. The restrictions of this paragraph shall continue in effect upon completion or termination of this Agreement for such period of time as may be mutually agreed upon in writing by the parties. In the absence of a written established period, no disclosure is authorized.

Seller hereby assigns to Buyer all rights of Seller to all ideas, processes, computer codes, computer programs, databases, inventions, works of authorship, technology, designs, formulas, discoveries, devices, symbols, marks, methods (of doing business or otherwise), patents, trademarks and copyrights developed by Seller or its employees in the course of performing the Work. Seller shall execute any document required to give effect to assignment described the preceding sentence and take any other action reasonably necessary to vest title to such developments in Buyer.

In the event that a current or former employee, affiliate, or supplier of Seller uses or shares proprietary information other than as herein specified, Buyer intends to pursue legal action to fullest extent of the law. The obligations set forth in this Section 14 are intended to supplement and be in addition to any nondisclosure obligations contained in a separate nondisclosure agreement executed between Buyer and Seller. In the event the Buyer and the Seller have executed a separate nondisclosure agreement, the terms of the nondisclosure agreement shall supersede the terms in this Order to the extent the terms set forth in this Order conflict with the terms in such nondisclosure agreement.

Seller acknowledges and agrees that in the event of any breach of this Section 14, Buyer will suffer a substantial and irreparable harm, and a claim for monetary damages will not constitute an adequate remedy. Seller therefore agrees that in the event of a breach or threatened breach of this Section by Seller, Buyer may apply to any court of competent jurisdiction for injunctive or other relief in addition to any other legal remedy to which Buyer may be entitled. Seller further waives any requirement that the Buyer post a bond or any other financial consideration in order to maintain such action for injunctive relief.

All property furnished by Buyer, whether loaned to Seller or fabricated, manufactured, purchased, or otherwise acquired by Seller for the performance of this Agreement and specifically charged to Buyer, are the property of Buyer and upon completion or termination of this Agreement shall be returned to Buyer in good condition unless otherwise directed in writing by Buyer. Seller should take appropriate measures including clearly marking, maintaining an inventory and segregating Buyer's property to protect Buyer's rights and interests in any property provided by Buyer to Seller.

15. DISPUTES

All disputes arising under this Order shall be settled in the following manner:

Buyer and Seller agree to enter into good faith negotiations to attempt to resolve any dispute. Both parties agree to negotiate in good faith to attempt to reach a mutually agreeable settlement of any dispute within a reasonable amount of time. Before either party brings an action for arbitration, the parties will attempt to settle such dispute through non-binding mediation.

If negotiation and/or non-binding mediation is unsuccessful, Buyer and Seller agree to enter into binding arbitration. The American Arbitration Association (AAA) Commercial Arbitration Rules (most recent edition) are to govern any such Arbitration. The Arbitration shall take place in Madison, Alabama. The Arbitrator shall be bound to follow the applicable Agreement provisions and Alabama law in adjudicating the dispute. It is agreed by both parties that the Arbitrator's decision is final, and that no party may take any action, judicial or administrative, to overturn this decision. The judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The parties hereto consent to the jurisdiction of the state and Federal courts located in Madison County, Alabama for the entry of any such judgment. The parties hereby waive any defense based on lack of jurisdiction of such courts or the convenience of such courts as forums for the entry of such judgments.



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Pending any decision, appeal, or judgment referred to in this provision or the settlement of any dispute arising under this Agreement, Seller shall proceed diligently with the performance of this Agreement. Buyer's failure to enforce any provisions of this Order shall not be construed as a waiver of the requirements of such provisions or any other provisions.

16. TERMINATION / SUSPENSION

Buyer may terminate or suspend this Agreement at any time and for any reason by written notice to Seller. Upon termination, Seller shall be paid for Work conforming to the Specifications performed up to the effective date of termination and Buyer shall have no further obligation or any liability of any nature to Seller; provided, that Seller's indemnification obligations shall continue in full force and effect following the termination of this Order.

17. POLICIES

Neither Seller, nor Seller's employees, shall: (i) be under the influence of any drug or alcoholic beverage in the performance of the Work or while on Buyer's or Buyer's customer's premises; (ii) possess any weapons of any kind or any hazardous materials while on Buyer's or Buyer's customers' premise; (iii) remove any of Buyer's (or its customer's) property from Buyer's (or its customer's) premises, unless authorized in advance by Buyer. Seller and its employees shall comply with all policies, guidelines, rules and regulations issued by Buyer from time to time in the performance of the Work.

18. APPLICABLE FEDERAL AND STATE LAW COMPLIANCE

This Agreement shall be governed by the laws of the State of Alabama. Seller agrees to comply with all applicable Federal, state, or local laws, ordinances or regulations in performing this Order, including all laws governing employment by Seller of its employees, income tax withholdings, the Occupational Safety and Health Act of 1970, any applicable Federal export control laws and all other applicable laws, ordinances and regulations. All requisite permits, licenses, fees, taxes and expenses connected with such compliance shall be procured by Seller.

19. INSURANCE

If the Work requires Seller to enter onto Buyer's (or Buyer's customer's) premises, Buyer may require Seller and its subcontractors to maintain workers' compensation, general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as Buyer may require. Seller shall provide a Certificate of Insurance showing Seller's compliance with this requirement promptly upon request by Buyer.