

Terms and Conditions of Purchase

1. ENTIRE AGREEMENT

- 1.1 McCoy Global Inc. and/or its affiliates (hereinafter referred to as "BUYER") and the "SELLER" (identified on the Purchase Order to which these terms and conditions are attached) hereby agree to be bound by the Purchase Order, these terms and conditions and all other documents attached to the Purchase Order (collectively, the "ORDER") in connection with the purchase of the items of goods and/or services described in the ORDER (the "ITEMS").
- 1.2 The ORDER, including ORDER'S attachments and references, forms the entire agreement between BUYER and SELLER **to the exclusion of any and all other terms and conditions whether oral or written including any terms and conditions the SELLER may have provided in SELLER'S quote or printed on SELLER'S Purchase Order acknowledgement, invoices, or any other forms or documents the SELLER may use** and the SELLER acknowledges that it has not relied on any statement, promise, or representation made by the BUYER which is not set out in the ORDER and waives any rights it may have in respect of the same. Nothing in these terms and conditions will operate to exclude liabilities for fraud or fraudulent misrepresentation.
- 1.3 In the event these terms are waived or modified in whole or in part, such waiver or modification shall either be noted in the body of the ORDER or provided in an addendum document from the BUYER attached to or enclosed with the ORDER and signed by a representative of the BUYER.

2. PRICE, INVOICING, SET-OFF, AND PAYMENT

- 2.1 The purchase price of the ITEMS shall be the purchase price specified in the ORDER, provided such purchase price shall not be higher than last purchase price quoted or charged to BUYER by SELLER unless otherwise agreed in writing. If SELLER'S established purchase price for any of the ITEMS on the date of shipment is lower than the purchase price specified herein, BUYER shall pay such lower purchase price therefore.
- 2.2 BUYER will not be liable for any federal, state, or local taxes unless separately stated and itemized on the face of the ORDER and invoice as a separate item. No items of goods are being purchased for re-sale, and no sales/use tax shall be added when an exemption has been provided to SELLER or if an exemption is indicated by the addition of BUYER'S Federal Tax Payer Identification Number on the face of the ORDER.
- 2.3 Unless stated otherwise in the ORDER, the purchase price is firm and fixed for the ITEMS ordered and not

subject to escalation from SELLER'S increase in labor or material costs, currency exchange rate fluctuations, or any other cause.

- 2.4 In the event that during the course of the ORDER, the BUYER shall change quantity or specification, under the provision of above, then any applicable change in purchase price (up or down) proposed by SELLER and agreed by the BUYER in writing shall be reflected in the ORDER amendment, thus the purchase price stated in the latest amendment of the ORDER shall be the purchase price the SELLER shall invoice and the BUYER shall pay.
- 2.5 BUYER shall pay the purchase price within the term stated in the ORDER after the ITEMS are received, subject to BUYER'S receipt of a proper invoice. In the absence of any specific payment terms, BUYER shall pay the purchase price for any the ITEMS within sixty (60) days after receipt of the ITEMS and the corresponding invoice. Invoices shall be mailed on, and dated as of, the date the ITEMS are shipped from SELLER. Any payments made by BUYER prior to BUYER'S acceptance of all the ITEMS shipped, shall be considered advances, subject to return in the event of rejection of any of the ITEMS.
- 2.6 Without prejudice to any other remedy or rights the BUYER may have, including without limitation at law or in equity, BUYER may withhold, set-off, or counterclaim any funds otherwise due SELLER in the event SELLER has any financial obligations to BUYER or otherwise shall be in default hereunder, so long as such default exists.
- 2.7 The purchase price for any of the ITEMS imported into the United States shall separately state and itemize the costs of duties, taxes, and fees included in the purchase price under Incoterms 2010 (DDP) Delivered Duty Paid conditions.

3. QUANTITIES AND DELIVERIES

- 3.1 Shipment must equal exact amounts ordered unless otherwise agreed by BUYER in writing.
- 3.2 TIME AND DATE OF DELIVERIES ARE OF THE ESSENCE OF THE ORDER. The delivery schedules are based upon SELLER'S agreement that: (a) the ITEMS will be delivered to BUYER'S location, Incoterms 2010 (DDP) Delivered Duty Paid (named place of destination), unless otherwise specified in the ORDER; and, (b) the ITEMS comprising services shall be completed, by the date specified in the ORDER.
- 3.3 If deliveries are made later than the date agreed upon, then BUYER shall have the right, in addition to all other remedies, to reject such ITEMS, and at BUYER'S

option, terminate the ORDER either with respect thereto or together with any remaining installments, and SELLER shall be liable for all loss thereby incurred by BUYER.

- 3.4 If it appears that SELLER will not meet or has not met the delivery schedule set forth herein, then SELLER, at BUYER'S request, shall: (a) ship any ITEMS via expedited routing; and/or, (b) use over-time work to get the ITEMS back on schedule. Any and all incremental increases in cost shall be borne by SELLER.
- 3.5 BUYER shall have the right to demand shipment of the ITEMS in one or more installments, within the time provided.
- 3.6 BUYER shall have the rights to consider any nonconforming installment shipment as a breach of the entire ORDER.

4. CHANGES

- 4.1 BUYER may at any time by written change orders to SELLER (and without notice to any surety or assignee) make changes in any one or more of the following in connection with the ORDER: (a) drawing designs or specifications; (b) methods of shipping or packing; (c) places of inspection, acceptance, or point of delivery; and/or, (d) delivery schedule.
- 4.2 To the extent that either party can demonstrate that any such change will increase or decrease the cost of or the time required for performance of the ORDER in any material respect, an equitable adjustment may be requested by such party in the purchase price, delivery schedule, or both.
- 4.3 No claim by SELLER for such an adjustment will be valid unless submitted to BUYER within thirty (30) days from the date of such change giving rise to the claim, and is signed by BUYER.
- 4.4 Nothing contained herein shall relieve SELLER from its obligation to proceed without delay in the performance of the ORDER, as changed by BUYER, pending the outcome of any disputes as to cost or schedule.

5. HAZARDOUS MATERIALS

- 5.1 For the ITEMS that may contain potentially hazardous and/or restricted materials, if requested by BUYER, SELLER shall promptly furnish to BUYER in whatever form and detail BUYER reasonably requests: (a) a list of all potentially hazardous ingredients in the ITEMS; (b) the quantity of one or more such ingredients; and/or, (c) information concerning any changes in or additions to such ingredients.
- 5.2 Before shipping the ITEMS, SELLER agrees to furnish to BUYER sufficient warning and notice in writing (including appropriate material safety data sheet (MSDS) labels on the ITEMS, containers, and packing) of any hazardous material that is an ingredient or a part of any of the ITEMS, together with such special handling

instructions necessary to advise the involved carriers, BUYER, and their respective employees how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the ITEMS, containers and packing shipped to BUYER.

- 5.3 SELLER shall comply with all applicable federal, state, local, and foreign laws (as applicable) and regulations pertaining to product and warning labels.

6. SPECIFICATIONS, TEST, AND INSPECTION

- 6.1 The SELLER shall comply with the specifications and all manufacturing and/or test processes, standards, or other information relating to the ITEMS defined by the BUYER (including BUYER'S Client where applicable) in the ORDER.
- 6.2 In the event that no specification is specified by the BUYER, the SELLER shall comply with all SELLER'S advertised specifications, standards, and codes applicable to the ITEMS to be provided under the ORDER.
- 6.3 The SELLER shall comply with all applicable regulations, other legal requirements, best practice, and industry standards concerning the manufacture, packaging, and delivery of the ITEMS.
- 6.4 In providing goods or services under this Order, SELLER shall comply with any and all applicable federal, state, local, and international laws, regulations, ordinances, executive orders, rules, orders, standards, conventions, directives, and treaties, including those relating to: (a) design, manufacture, transportation, sales, advertising, distribution, exportation, importation, labeling, packaging, certification, or approval of the goods or services; or, (b) employment discrimination, hours and conditions of employment, occupational health and safety, wages, environmental matters, product safety, motor vehicle safety, corrupt or deceptive practices, boycotts, antitrust, consumer products, or government subcontracting. If the BUYER has provided any assistance in identifying such laws or regulations that may apply, these are for guidance purposes only. The SELLER is solely responsible to ensure SELLER'S ITEMS meet all applicable laws and regulations that apply.
- 6.5 The SELLER shall not unreasonably refuse any request by the BUYER to inspect and/or test the ITEMS at the SELLER'S premises during or upon completion of manufacture. Such request may, where applicable include inspection and/or test by the BUYER'S Client or an appointed third-party inspection authority. The SELLER shall also procure that the BUYER shall have identical rights of inspection and/or test at the SELLER'S subcontractor's premises.
- 6.6 The ITEMS 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.

7. NONCONFORMING ITEMS

- 7.1 BUYER may reject and hold subject to SELLER'S disposal or return to SELLER, at SELLER'S expense, any ITEMS, which are not as warranted, or otherwise not in conformity with the requirements of and specifications in the ORDER, or which exceed the quantity ordered.
- 7.2 Under no circumstances shall BUYER be required to resell the rejected ITEMS. Without limiting any other rights BUYER may have, BUYER at its option, may require SELLER to repair or replace, at SELLER'S expense, any or all of the ITEMS rejected by BUYER or to refund the price of any or all rejected ITEMS.
- 7.3 SELLER'S obligations with regard to the replacement of defective ITEMS shall include the obligation to replace any items of BUYER'S property that are damaged by a defective ITEM, and shall include "in and out" costs, to the extent the defective ITEM is installed in a larger piece of equipment or structure.
- 7.4 SELLER shall not re-quote to BUYER any ITEMS previously rejected by BUYER unless BUYER has been notified of such re-quote and consents to the same in writing.

8. PERFORMANCE AND DELIVERY

- 8.1 The SELLER shall schedule and perform SELLERS work, including SELLERS procurement of sub-supplies, in a timely manner to be able to achieve the delivery date stated in the ORDER.
- 8.2 The ITEMS shall be delivered to, and/or performed at the delivery address on the date or within the period stated in the ORDER.
- 8.3 The BUYER is under no obligation to accept the ITEMS delivered more than five (5) days earlier than the specified delivery date, however if the BUYER elects to accept such ITEMS the payment date will be calculated from the delivery date specified in the ORDER.
- 8.4 The BUYER reserves the right by the service of not less than two (2) weeks notice to delay delivery of ITEMS for up to eight (8) weeks without any increase in purchase price by the SELLER. After eight (8) weeks, the BUYER and SELLER shall mutually agree any further period of delay the BUYER may reasonably require and any additional purchase price the SELLER may request for SELLER'S costs unavoidably incurred as a direct consequence of such extended delay.
- 8.5 If the ITEMS are to be delivered and/or to be performed, by installments, the ORDER will be treated as a single order and not severable.
- 8.6 The BUYER shall be entitled to reject any ITEMS delivered which are not in accordance with the ORDER

or the specification, and shall not be deemed to have accepted of the ITEMS 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 ITEMS has become apparent.

- 8.7 The SELLER shall supply the BUYER in good time (but not later than the date of the delivery of ITEMS) with any handling and installation, instructions and other data, including any inspection, material and test certificates that the BUYER shall reasonably require to incorporate the ITEMS into BUYER'S or BUYER'S Client's product or site.
- 8.8 The BUYER shall be entitled to withhold up to ten percent (10%) of the purchase price of the ITEMS until all documentation requisitioned in the ORDER has been delivered.

9. TITLE AND RISK

- 9.1 Risk in the ITEMS shall pass to the BUYER upon delivery to the BUYER in accordance with the ORDER.
- 9.2 Title (Property) in the ITEMS shall pass to BUYER upon the earlier of payment for or delivery of the ITEMS.

10. WARRANTY AND DEFECT REMEDY

- 10.1 The SELLER warrants to the BUYER that the ITEMS will: (a) be new, of merchantable quality and fit for the intended purpose specified in the ORDER, or when not specified in the ORDER be fit for any purpose for which ITEMS of that description are generally used; (b) be free from defect in design, material, and workmanship; (c) correspond with any relevant Specification or sample; (d) will comply with all statutory requirements and regulations relating to the manufacture and sale of such ITEMS.
- 10.2 The SELLER warrants to the BUYER that all the ITEMS performed will be carried out by appropriately qualified and trained personnel with due care and diligence and to such a high standard of quality as is reasonable for the BUYER to expect in all circumstances.
- 10.3 The SELLER warrants to the BUYER that the ITEMS shall not infringe or contribute to the infringement of any patents, trademarks, copyrights, or other proprietary rights.
- 10.4 Without prejudice to any other remedy or rights the BUYER may have, including without limitation at law or in equity, if any ITEMS are not supplied or performed in accordance with the ORDER, then the BUYER shall be entitled: (a) in respect of ITEMS which are found to be defective with twelve (12) months of first use or eighteen (18) months from delivery, whichever the later to require the SELLER to repair or replace the defective ITEMS at no cost to BUYER; or, (b) at BUYER'S sole option, and whether or not the BUYER has previously required the SELLER to repair the ITEMS or to supply replacement ITEMS in accordance with the ORDER to treat the ORDER as discharged by the SELLER'S breach and

require the repayment of any part of the purchase price which has been paid.

11. BUYER'S PROPERTY AND INFORMATION

- 11.1 All tools, dies, molds, templates, equipment, Specifications, data, drawings, designs, software, or materials furnished by BUYER to SELLER or paid for by BUYER, including replacements and materials attached thereto, shall remain and be marked as the personal property of BUYER. Such items shall be separately stored and insured by SELLER, and SELLER assumes all risk of loss and liability arising out of or related to the items, until such items are returned to BUYER. These items shall be used by SELLER only for filling BUYER'S ORDER and are subject to immediate removal, at BUYER'S written request, with each item to be delivered (at SELLER'S expense) in its original condition, reasonable wear and tear excepted.
- 11.2 SELLER shall provide to BUYER, without restriction on use or disclosure, all information and documents that SELLER has or shall develop or acquire related to the work SELLER is performing under the ORDER. Such information and documents shall be deemed to be "works for hire" and be the property of BUYER, with BUYER having a right of use for any purpose, without liability to SELLER.
- 11.3 All information and documents BUYER may have disclosed or shall disclose to SELLER in connection with the ITEMS to be delivered and/or ITEMS to be performed under the ORDER shall be deemed confidential and proprietary and shall not be disclosed or used by SELLER without the written consent of the BUYER.

12. LIABILITY, INDEMNITY, AND INSURANCE

- 12.1 SELLER shall defend, indemnify, and hold BUYER and its directors, officers, employees, clients, affiliates, agents, contractors, successors and assigns harmless from and against any and all claims, liabilities losses, damages (including special, consequential and incidental damages), actions and expenses (including reasonable legal fees) in connection with: (a) any breach by SELLER of its warranties, covenants, or obligations hereunder; (b) any injury (including death), property damage, or economic loss arising out of or related to (i) defective or nonconforming ITEMS supplied by SELLER under the ORDER; or, (ii) acts or omissions of SELLER or its employees or subcontractors in providing ITEMS or performing work, including work at BUYER'S or BUYER'S Client's premises or using BUYER'S property, unless resulting from the sole negligence of BUYER; (c) any failure to comply with applicable laws and regulations; and, (d) any infringement or contributory infringement ("Infringement") of a patent, trademark, copyright, or other proprietary interest by reason of the manufacture,

delivery, license, use, or sale of the ITEMS supplied under the ORDER ("Intellectual Property Rights"), **REGARDLESS WHETHER (A) THROUGH (D) ABOVE ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), MISREPRESENTATION, WARRANTY, BREACH OF STATUTORY DUTY OR ANY OTHER THEORY OF LEGAL LIABILITY.**

- 12.2 SELLER shall provide employers liability, commercial general liability, automobile, public liability, and property damage insurance in amounts and coverage sufficient to satisfy all claims hereunder. Such policies shall name BUYER as an additional insured, shall be endorsed to be primary to any coverage provided by BUYER, and shall contain a waiver of any subrogation rights against BUYER.
- 12.3 For any ITEMS subject to any Intellectual Property Rights not owned by the BUYER, SELLER shall, at SELLER'S expense, obtain for BUYER a perpetual, royalty-free license with respect to such ITEMS, or shall replace or modify the ITEMS in a manner satisfactory to BUYER, so as to avoid Infringement without any degradation in performance. SELLER'S obligations shall apply even though BUYER furnishes any portion of the design or specifies materials or manufacturing processes used by SELLER.
- 12.4 **THE BUYER SHALL NOT BE LIABLE TO THE SELLER UNDER OR IN CONNECTION WITH THE ORDER, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE AND STRICT LIABILITY, MISREPRESENTATION, WARRANTY, BREACH OF STATUTORY DUTY OR ANY OTHER THEORY OF LEGAL LIABILITY: (A) IN ANY AMOUNT EXCEEDING THE PURCHASE PRICE, AND (B) FOR ANY LOSS OF PROFIT, BUSINESS OR CONTRACT OR ANY CONSEQUENTIAL OR INDIRECT LOSS, CLAIM OR DAMAGE.**

13. FORCE MAJEURE

- 13.1 Neither BUYER nor SELLER shall be responsible for its failure to perform due to causes beyond its reasonable control and not caused by its negligence such as acts of God, fire, earthquakes, war, riot, embargoes, or acts of civil or military authorities.
- 13.2 If delivery is to be delayed by force majeure, SELLER shall immediately notify BUYER in writing and BUYER may either: (a) extend SELLER'S time of performance; or, (b) terminate the uncompleted portion of the ORDER, at no cost to BUYER.

14. TERMINATION

- 14.1 The BUYER may at any time prior to delivery of ITEMS and/or performance of ITEMS terminate the ORDER for the convenience of the BUYER (including BUYER'S Client) by giving the SELLER written notice of such termination.

- 14.2 Upon such notice of termination for convenience the SELLER shall immediately cease work on the ORDER and shall mark and identify all material associated with the execution of the ORDER. The BUYER shall pay the SELLER reasonable termination charges solely limited to the cost of SELLER'S non-stock material, goods, and labor specifically used or committed in the execution of the ORDER up to the date of termination. The SELLER shall not be entitled to claim for SELLER stock material or stock goods, which the SELLER can reasonably restock and use in the course of his normal business. The BUYER shall be entitled to take delivery and title (property) or provide disposal instructions for any material or goods for which BUYER has paid the SELLER. Under no circumstances shall the SELLER be entitled to reuse or resell any material paid for by the BUYER.
- 14.3 BUYER may terminate all or any part of its purchases under the ORDER for cause if SELLER: (a) fails to deliver ITEMS or perform ITEMS in the quantity and to the quality or by the date or within the time stated in the ORDER or specification, including any extension of time, provided in any amendment to the ORDER; (b) breaches these terms and conditions (including SELLER'S warranties and covenants); (c) following written notice by the BUYER of such concern, fails to satisfy the BUYER that progress of the ITEMS is such that timely and proper performance of the ORDER or specification will be achieved; (d) SELLER ceases or threatens to cease to carry on business; (e) the SELLER makes any voluntary arrangement with its creditors; (f) an encumbrancer takes possession of or a receiver is appointed over any of the property or assets of the SELLER; (g) a winding up order is presented against the SELLER; or (h) the BUYER reasonably apprehends that any of the events mentioned in (a) to (g) above is about to occur in relation to the SELLER and notifies the SELLER accordingly.
- 14.4 In the event BUYER terminates the ORDER for cause, as detailed above, the SELLER shall immediately cease work and if required by the BUYER deliver to BUYER all satisfactorily completed ITEMS or material or work in progress for the BUYER to complete in any manner the BUYER deems appropriate. If in the sole opinion of the BUYER the completed ITEMS or material or work in progress cannot be used by BUYER the BUYER may purchase substitute ITEMS from any other source.
- 14.5 Upon the completion of the BUYER'S obligations to BUYER'S Client and payment by the BUYER'S Client to BUYER, the BUYER will pay the SELLER the cost of all satisfactorily completed ITEMS or material and work in progress for which BUYER has taken possession, less the BUYER'S extra cost (including expenses and any loss or damage suffered by the BUYER and/or BUYER'S Client) to complete the work by other means to the satisfaction of the BUYER (including BUYER'S Client).

15. GENERAL

- 15.1 SELLER shall act in a manner consistent with all laws concerning improper or illegal payments and gifts or gratuities and agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining a retaining business in connection with the ORDER.
- 15.2 The ORDER is personal to the SELLER and the SELLER shall not assign or transfer to any other person any of its rights or subcontract any of its obligations under the ORDER without the prior written consent of the BUYER.
- 15.3 Any notice required or permitted to be given by either party to the other under these terms shall be in writing, addressed to the other party at its registered office or principal place of business or such address as may at the relevant time have been notified in writing pursuant to this provision to the party giving notice.
- 15.4 No waiver by the BUYER of any breach of the ORDER by the SELLER shall be considered as a waiver of any subsequent breach of the same or any other provision. No failure or delay by the BUYER to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or some other right, power or remedy.
- 15.5 BUYER'S remedies shall be cumulative. BUYER may, but shall not be obligated to cancel the ORDER, refuse to take delivery of any of the undelivered ITEMS, reject the ITEMS delivered or retain the ITEMS and exercise any other rights and/or remedies available to BUYER, at law or in equity, if SELLER fails to comply with any of the terms and conditions set forth herein. Any such refusal to take delivery shall relieve BUYER from any further obligation hereunder, provided such refusal shall not prejudice the rights of the parties with respect to ITEMS sold or delivered to BUYER prior thereto.
- 15.6 Except as otherwise specified herein, no supplement, modification, or amendment of any term, provision, or condition of the ORDER shall be binding or enforceable unless executed in writing by the parties hereto.
- 15.7 In the event of default hereunder, the defaulting party shall be liable to the non-defaulting party for all expenses and costs incurred by the non-faulting party in protecting or enforcing its rights hereunder including but not limited to reasonable attorneys' fees and costs of court or arbitration.
- 15.8 If any provision of these terms and conditions are held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these terms and conditions and the remainder of the provisions in question shall not be affected thereby.

- 15.9 SELLER shall not, without the prior written consent of BUYER, disclose any information relative to this ORDER to any third party. Any drawings, specifications or other materials and information submitted or revealed by BUYER to SELLER in connection with the ORDER are confidential and proprietary to BUYER and shall not be disclosed to any third party or utilized by SELLER in any manner other than in filling BUYER'S orders. To the extent that SELLER must share confidential information with subcontractors and suppliers, SELLER shall only do so after such parties have entered into a confidentiality agreement no less stringent than herein provided.
- 15.10 The ORDER shall be deemed to have been made in Harris County, Texas and shall be governed by and construed and enforced in accordance with and subject to the laws of the State of Texas. BUYER and SELLER expressly agree that any action relating to or arising from this ORDER shall be instituted and prosecuted in the state courts of or federal courts for Harris County, Texas, SELLER expressly and irrevocably consents to personal jurisdiction in the appropriate State of Texas or Federal court therein. SELLER further irrevocably consents to service of process by certified mail, return receipt requested to the address set forth on the face of the ORDER, and BUYER and SELLER each waive the right to change of venue.
- 15.11 In the event the ORDER is deemed to be a subcontract within the meaning of Section 202 of Executive Order 11246, dated September 24, 1965, as amended, then such section is hereby incorporated herein by reference, to the general effect that the SELLER shall not discriminate against any employee or applicant for employment under the ORDER because of race, color, religion, sex or national origin and further that the SELLER shall take affirmative action to ensure that applicants and employees are treated without regard to their race, color, religion, sex or national origin. Also incorporated herein by reference are the affirmative action obligations of contractors and subcontractors with respect to veterans (41 C.F.R. Part 60-250) and with respect to handicapped workers (41 C.F.R. Part 60-741), to the extent that such provisions are applicable.