

---

CNB-DIV-663A  
**Terms & Conditions**  
**Commercial Goods and Services under Government Contract**

**1. Acceptance.** This order is subject to immediate acceptance. Unless so accepted, Buyer reserves the right to cancel without penalty. Acceptance of this order by Seller will be by either (a) a signed written acceptance, or (b) any performance by the Seller.

**2. Entire Agreement.** This order as executed by Buyer constitutes the entire agreement between the parties. This agreement can be changed only by a written instrument duly executed by an authorized representative of Buyer. Each shipment received by Buyer from Seller shall be deemed to be subject to these terms and conditions. Buyer hereby objects to and rejects any inconsistent terms contained in any acknowledgement, invoice or other communication from Seller, and Buyer's acceptance, payment or any similar act shall not be deemed as agreement to Seller's inconsistent terms. However, if the parties have entered into a written contract which is currently in effect covering the items described in this order, or are otherwise subject to separate terms and conditions as a result of a subcontracting relationship, then the written contract or terms and conditions of the subcontract relationship shall control and supersede any terms or conditions hereof that are in conflict with it, but all other terms and conditions of this order shall remain in effect.

**3. Delivery.** Time is of the essence in the performance of this purchase order by Seller. Delivery is to be made both in quantities and at times specified herein. If Seller's delivery shall fail to meet schedule, Buyer, without limiting its other rights or remedies, may direct expedited routing, and any excess cost incurred thereby shall be debited to Seller's account. Buyer shall not be liable for Seller's commitments or production arrangements in excess of the amount, or in advance of the time, necessary to meet Buyer's delivery schedule. Goods delivered in advance of schedule may, at Buyer's option, (i) be returned at Seller's expense for proper delivery, (ii) have payment therefore withheld by Buyer until the date that goods are actually scheduled for delivery, or (iii) be placed in storage for Seller's account until delivery date specified herein.

**4. Certificate of Conformance (C of C):** Each shipment must be accompanied by a minimum of one (1) legible and reproducible copy of a C of C stating that the items produced were from materials which conform to all applicable specifications. The certificate must be signed and dated by an authorized quality official of the company. The certification must also indicate:

a. From Original Manufacturer - specific data or other objective evidence that the material conforms to the applicable specifications and Cherokee Nation PO requirements will be available for examination upon request. It shall also provide the specification revision level, lot or date-code and test acceptance data.

b. From a Distributor - C of C must include the original manufacturer's name and provide the specification revision level, lot or date-code and test acceptance data.

**5. Changes.** Buyer reserves the right to make changes in writing to descriptions as to any goods covered by this order, scheduled deliveries and (or) quantity. Any difference in price or time for performance resulting from such changes shall be equitably adjusted at the time of such change, and this order shall be modified in writing accordingly.

**6. Packing, Marking and Shipping.** All goods shall be suitably packed using best commercial practices, marked and shipped in a manner to adequately protect the goods in shipment and to secure lowest transportation costs unless otherwise specified by Buyer. Packing slips shall be placed in each shipment and Buyer's Purchase Order number shall be referenced on the packing slip. No packing or related charges shall be allowed except where specifically agreed upon.

**7. Inspection.** Goods shall be subject to Buyer's reasonable inspection and approval before and after delivery. Goods rejected at delivery may be immediately returned to Seller. Goods rejected after delivery will be held for Seller's instructions and Buyer's reasonable expenses incurred in

connection therewith shall be borne by Seller. Unauthorized shipments will be returned freight collect after 7 days with or without Seller's return authorization.

**8. Non-Conforming Goods.** If the goods ordered herein fail to meet the specifications or otherwise do not conform to the requirements of this purchase order, Buyer shall have the right to reject such goods. Goods that have been delivered and rejected may be returned to Seller for replacement, correction, reimbursement, or credit as Buyer may direct. If, after notice, Seller fails to promptly replace or correct such rejected items, same may be replaced or corrected (without thereby exercising wrongful ownership) by Buyer at the expense of Seller. Any goods rejected by Buyer shall be at Seller's risk and expense, and such goods shall not thereafter be tendered for acceptance unless the former rejection or requirement for correction is disclosed. Packaging and handling expense incidental thereto and applicable transportation cost shall be charged to Seller's account. Upon non-acceptance, repudiation or rejection of any goods, Buyer shall not be liable for any profit Seller would have made, nor for incidental damages. For non-conformances discovered prior to shipment or delivery, Seller shall contact Buyer as soon as the non-conformance is known, to determine if a Supplier Information Request (SIR) should be completed to facilitate the disposition of identified non-conformances. Unless otherwise expressly granted in writing by Buyer, no relief in the established delivery schedule shall accrue by virtue of Seller having notified Buyer of the non-conformance.

**9. Warranty of Good and Services.** Seller expressly warrants that all goods and services covered by this purchase order shall conform to the specifications, drawings, samples or other description upon which this purchase order is based, shall be fit and sufficient for the purposes intended, merchantable, of good material and workmanship and free from defects, and shall be free of any claim of any third party. Inspection, test, acceptance or use of the goods furnished hereunder shall not affect the Seller's obligation under these warranties, and such warranties shall survive inspection, test, acceptance and use.

Seller agrees to replace or correct defects in any goods or services not conforming to the foregoing warranties promptly, without expense to Buyer, when notified of such nonconformity by Buyer. In the event of failure by Seller to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by Buyer thereby. Buyer's approval of any sample or acceptance of any goods shall not relieve Seller from responsibility to deliver goods and to perform services conforming to specifications, drawings, and descriptions.

**10. Tooling and Other Articles.** Unless otherwise specified in this purchase order, all tooling and all other articles required for the performance hereof shall be furnished by Seller and shall be properly maintained and replaced when necessary at Seller's expense.

If Buyer agrees to pay Seller for such tooling and other articles, either separately or as a stated part of the unit price of goods purchased herein, title to same shall pass to Buyer upon (i) commencement of processing for use in performance of this purchase order, or (ii) Buyer payment therefore, whichever occurs first. Any such tooling and other articles which are Buyer's property shall be used only in the performance of this purchase order unless otherwise provided in writing by Buyer. Seller agrees to follow normal industrial practice in the preparation and maintenance of pertinent property control records, and shall make such records available for inspection by Buyer at all reasonable times. After completion or termination of this purchase order and upon the request of Buyer, Seller shall furnish a list of such Buyer's property in the form requested by Buyer and shall make such available for disposition by Buyer. Buyer may, at its sole discretion and by written notice, divest itself of title in favor of Seller.

**11. Buyer's Property.** Title to all property furnished to Seller by Buyer or paid for by Buyer shall remain with Buyer. Seller shall not alter or use such property for any purpose or for any other party other than that specified by Buyer, without the prior written consent of Buyer. Seller shall keep adequate records, which shall be made available to Buyer upon request, and shall store, protect, preserve, repair, and maintain such property in accordance with sound industrial practice, all at Seller's expense.

In the event that Buyer's property becomes lost or damaged to any extent for any cause while in Seller's possession, Seller agree to replace or repair such property, at Seller's expense, in accordance with Buyer's request. Seller will request disposition of Buyer's property upon completion or termination of work.

**12. Invoicing Instructions.** Itemized invoices shall be mailed in duplicate to the address as noted on the Buyer's purchase order. All invoices must reference Buyer's applicable Purchase Order number. Sellers may be directed to ship small parcels and to include freight as a separate item on the invoice. A copy of the small parcel shipping papers and freight bill will be included with the invoice or the parcel.

**13. Material Furnished by Buyer.** Any material furnished by Buyer in connection with this order shall remain the property of Buyer. All such material not used in the manufacture or fabrication of the goods covered by this order shall be returned as directed by Buyer at Buyer's expense. Seller shall reimburse Buyer for any materials not returned promptly when requested by Buyer.

**14. Proprietary Information.** If Buyer furnishes any items of information, such as drawings, with or as a result of this order, Seller will treat the information as proprietary if it is labeled as such, or if Seller has reasonable notice that Buyer considers the information to be proprietary. In such instances, Seller will take care to protect the information, not to disclose the information to third parties, and to return the information to Buyer or destroy the information at the completion of this order, as directed by Buyer.

**15. Warranties.** Seller expressly warrants that the goods (a) conform to the Seller's affirmations and promises relating to the goods; (b) conform to the descriptions, samples and models furnished by Seller or specified by Buyer; (c) are new and of merchantable quality; (d) are of good material and workmanship and free from defects; and (e) are fit for any ordinary or known particular purpose. Seller further warrants to Buyer that Seller has merchantable title to such goods free and clear of any liens or other encumbrances.

**16. Failure of Seller to Perform.** If Seller fails in any respect to comply herewith or with any other contracts then existing with Buyer, Buyer at its option may terminate this order and any other contracts with Seller. Further, Buyer at its option may defer further receipt of deliveries to be made pursuant to this order or any such other contract pending compliance by Seller with this or such other contract. Buyer's rights pursuant to this provision shall be in addition to any and all other legal remedies available to it. A waiver of a breach of any provision hereof shall not constitute a waiver of any other breach.

**17. Termination for Convenience.** Buyer may at any time terminate this purchase order in whole or in part for its convenience upon written notice to Seller, in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the purchase order price reflecting the percentage of the work performed prior to termination, plus any reasonably incurred settlement expenses.

**18. STOP-WORK ORDER.** The Buyer may, at any time, by written order to the Seller, require the Seller to stop all, or any part, of the work called for by this purchase order for a period of 90 days after the written order is delivered to the Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the stop-work order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Seller, or within any extension of that period to which the parties shall have agreed, the Buyer shall either (1) cancel the stop-work order; or (2) terminate the work covered by the stop-work order as provided for in Clause 10 of this purchase order.

**19. Termination for Default.** Buyer may forthwith terminate this purchase order in whole or in part for default in the event of the occurrence of any of the following: (1)(i) Insolvency of the Seller-Seller shall be

deemed to be insolvent if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether it has committed an act of bankruptcy or not and whether insolvent within the meaning of the Federal Bankruptcy Act or not; (ii) the filing of a voluntary petition to have Seller declared bankrupt; (iii) the appointment of a receiver or trustee for Seller, or (iv) the execution by Seller of an assignment for the benefit of creditors. (2) Failure of Seller per the terms of this purchase order to – (i) deliver the supplies or perform the services within the time specified in this purchase order to any authorized extension, (ii) make progress so as to endanger the performance of this purchase order, or (iii) perform to any other substantive provisions of this purchase order. The Seller shall diligently proceed with performance of any purchase order work not terminated.

**20. Compliance with Laws.** Seller shall strictly observe, comply with, and give all notices required by, all local, municipal, state, and federal laws, ordinances, rules, directives, orders, and regulations related to the goods and/or services covered by this order.

**21. Governing Law.** This purchase order, and the acceptance thereof, shall be a contract made in the state of Buyer's office address as shown on the face of this purchase order, and shall be governed by and construed according to the laws thereof if to be wholly performed within such state.

**22. Indemnity.** Seller shall defend, indemnify, and hold Buyer harmless from and against any and all claims, losses, damages, suits, judgments, fines, penalties, or any other loss including costs, expenses and attorneys' fees arising out of or occurring in connection with this order. The foregoing indemnification obligations shall include without limitation claims, losses, damages, suits, judgments, fines, penalties, or any other loss including costs, expenses and attorneys' fees arising out of or occurring in connection with Seller's breach of the terms and conditions of this order, Seller's breach of any warranty made in this order, and Seller's infringement or violation of the right of any person, such as under any patent, trademark or copyright laws. All indemnification obligations of Seller shall extend to the officers, directors, employees, and agents of the Buyer and shall continue notwithstanding completion, acceptance or payment relating to this order.

**23. Patents and Design Rights.** Seller agrees, at its own expense, to defend any suit or action against Buyer or against those selling or using the goods or services covered by this purchase order for alleged infringement of patent or invention rights arising from the sale or use of such goods or services, and to indemnify and save Buyer harmless from any damages, liabilities, claims, losses, and expenses (including attorneys' fees) paid or incurred by Buyer in connection with any such suit or action, whether against Buyer or against those selling or using the goods or services covered by this purchase order.

**24. Assignability.** Neither this order nor any claim pursuant to this order shall be assignable in whole or in part by Seller or by operation of law, without the prior written consent of the Buyer. Any such purported assignment without such consent shall be void.

**25. Force Majeure.** Strikes, fire, accidents or other causes beyond the reasonable control of Buyer, which shall affect Buyer's ability to receive and use the goods, work or service ordered, shall constitute valid ground for suspension of shipment or work or service pursuant to this order without penalty to Buyer. Buyer shall notify Seller by facsimile or letter. Buyer will not exercise this cancellation right without reimbursement to Seller for expenditures actually made for labor and materials specifically for this order.

**26. Insolvency.** Buyer reserves the right to cancel all or any part of this order in the event Seller becomes insolvent or involved in insolvency proceedings, including without limitation, an assignment for the benefit of creditors, and in any of these events, Seller agrees to immediately notify Buyer in writing.

**27. Clause Modification Required by Buyer's Customer.** Seller agrees to incorporate into this purchase order any revised clause or additional clause as Buyer may reasonably deem necessary to enable Buyer to comply with the provisions of the higher-tier contract and any modifications thereto. If any such revised clause or additional clause causes any increase or decrease in the cost of or time required for performance of the purchase order work, an equitable adjustment shall be made in accordance with the procedures of the Changes clause hereof.

**28. Waivers.** Waiver by either party of any default hereunder by the other party shall not be deemed waiver of any subsequent default.

**29. Conflict of Interest.** Seller will not use any funds received under this order for illegal or otherwise “improper” purposes related to the purchase commitment. Seller will not pay any commissions, fees or rebates to any employee of the Buyer, nor favor any employee of the Buyer with gifts or entertainment of significant cost or value. If the Buyer has reasonable cause to believe that one of the above provisions has been violated, the Buyer, or its representative, may audit the records of the Seller for the sole purpose of establishing compliance with such provisions.

**30. Work on Buyer’s Premises.** Seller may not commence work (including on-site deliveries) on Buyer’s premises until signed acknowledgement and certificates of are submitted to Buyer in a form acceptable to Buyer. By acknowledgement or commencement of work, Seller accepts Buyer’s standard terms and conditions relating to insurance, which shall be attached to this order as Attachment A and are specifically incorporated herein.

**31. Limitation of Liability.** In no event shall Buyer be liable for any consequential, incidental or indirect damages or loss of anticipated profits sustained by Seller or its subcontractors regardless of the foreseeability of such damages.

**32. Attorney’s Fees and Interpretation.** In any legal action initiated by Buyer relating to this order, Buyer, if it prevails in such action, shall be entitled to recovery of all its costs incurred in such legal proceeding, including reasonable legal fees, expenses, court costs, and witness, expert and consulting fees. The rights and obligations of the parties to this Agreement shall be governed by and construed in accordance with, the laws of the Cherokee Nation.

Any disputes arising under this Agreement shall be adjudicated in the courts of the Cherokee Nation.

**33. Payment Terms.** Unless otherwise stated on the Purchase Order, payment terms are net thirty (30) days. Under these Terms and Conditions,

“net thirty” means the check will be issued on the 30<sup>th</sup> day after the latter of the invoice or delivery date.

**34. Export Compliance.** Seller is advised that its performance of this Subcontract may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the “Export Laws and Regulations”). Seller represents and warrants that it is either 1) a U.S. Person as that term is defined in the Export Laws and Regulations, or 2) that it has disclosed to Buyer’s Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and US immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.

**35. Taxes.** Seller’s prices shall be exclusive of any federal, state, or local sales, use, or excise taxes levied upon, or measured by, the sale, the sales price, or use of goods required in the performance of this purchase order. Seller shall list separately on its invoice (or voucher) any such tax lawfully applicable to any such goods, and payable by Buyer, with respect to which Buyer does not furnish to Seller lawful evidence of exemption. Seller shall comply with any reasonable request by Buyer regarding payments under protest, and regarding any refunds, claims, litigation, or proceedings with respect to any such taxes and shall make appropriate adjustments to afford Buyer the benefit of any refund or reduction in such taxes.

**36. FAR Flowdown Provisions.** The Federal Acquisition Regulation (FAR) clauses referenced herein are incorporated by reference with the same force and effect as if provided in full text. Full Text for each clause is available for review at: <http://farsite.hill.af.mil/VFFARA.HTM>. Specific FAR’s / DFAR’s are made applicable based on the types of material, services, and/or subcontract purchases involved. Applicable to the clauses incorporated by reference below:

1. Substitute “CND, LLC, CNRW, LLC, CNSD, LLC or CNDS, LLC” for “Government” or “United States” throughout the clauses.
2. Substitute “CND, LLC, CNRW, LLC, CNSD, LLC or CNDS, LLC Procurement Representative” for “Contracting Officer”, “Administrative Contracting Officer”, and “ACO” in the clauses.
3. Communication/notification required under these clauses from/to the Contractor to/from the Contracting Officer shall be through CND, LLC, CNRW, LLC, CNSD, LLC or CNDS, LLC.

Regulatory Cite	Title	Date
52.202-1	DEFINITIONS	JUL/2004
52.222-26	EQUAL OPPORTUNITY	MAY/2007
52.222-35	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIBIBLE VETERANS	SEP/2006
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES	JUN/1998
52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	SEP/2006
52.222-50	COMBATING TRAFFICKING IN PERSONS	FEB/2009
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS	AUG/2009
52.245-1	GOVERNMENT PROPERTY	JUN/2007
52.247-63	PREFERENCE FOR U.S. FLAG AIR CARRIERS	JUN/2003
52.249-14	EXCUSABLE DELAYS	APR/1984
252.227-7025	LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS	JUN/1995
252.247-7023	TRANSPORTATION OF SUPPLIES BY SEA	MAY /2002
52.222-39	NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES	DEC/2004