

TERMS & CONDITIONS– COMMERCIAL ITEMS

1. These Purchase Order Terms and Conditions represent the governing terms and conditions between Red River Technology LLC, a Delaware Limited Liability Company with its principal location at 21 Water Street, Suite 500, Claremont, NH 03743-2228 ("Red River") and the supplier (the "Supplier") identified in the Purchase Order.
2. All Purchase Orders submitted to Supplier by Red River are subject to these Terms & Conditions. Red River may cancel any Purchase Order or any portion thereof prior to shipment of the products by Supplier.
3. Unless otherwise specified in the Purchase Order, the Supplier's prices include all applicable taxes (including, but not limited to, sales, use, value-added and ad valorem taxes, tariffs, and assessments after audit), shipping and delivery charges, duties, customs, tariffs, and government-imposed surcharges. Supplier is responsible for payment of all applicable taxes, exclusive of taxes based on Red River's income. Supplier shall list separately on its invoice any such tax lawfully applicable to any products or services, and payable by Red River, with respect to which Red River does not furnish to Supplier lawful evidence of exemption. Supplier shall use its best efforts to assist Red River in any legal efforts to minimize the taxes resulting from the performance of the Purchase Order. Red River will make payment within 60 calendar days after receipt of Supplier's invoice, unless otherwise agreed in writing.
4. Time is of the essence in the performance of Supplier's obligations under the Purchase Order. Supplier shall immediately notify Red River if timely performance is delayed or is likely to be delayed for any reason. Red River's acceptance or acknowledgement of such notice shall not constitute a waiver of any of Supplier's obligations. Delivery is to be made both in quantities and at times specified in the Purchase Order. If Supplier is unable to deliver the entire Order according to the delivery schedule therein, Red River may, at its sole discretion, (i) cancel the Order without penalty; (ii) accept partial delivery, in which event such delivery shall be separately invoiced and paid for; (iii) direct expedited routing, and any excess cost incurred thereby shall be debited to Supplier's account; or (iv) terminate or modify the Purchase Order in whole or in part without any liability whatsoever. If Red River accepts partial delivery, it may cancel the remainder of the subject Order at any time prior to Supplier's shipment (as communicated in writing to Red River) of the remaining portion. If Supplier delivers any products or services after the specified delivery date, Red River may reject such Work without liability.
5. Risk of loss remains with Supplier until the ordered products are received at the location stated in the Purchase Order or, if none is stated, Red River's facility or Red River's customer's location (in the case of directly shipped products). Title passes to Red River when the products are received at the Red River facility stated in the Purchase Order (except when the Purchase Order identifies Red River's customer's location, in which case title passes when the products are received by the transportation carrier).
6. All products delivered by Supplier are subject to inspection and acceptance/rejection by Red River or Red River's customer (in the case of directly shipped products) within a reasonable time after receipt. If the products are defective or do not conform to the Purchase Order, in whole or in part, Red River or its customer may reject the products and, at Red River's option, either (a) require Supplier to replace the products at no additional cost or (b) return the products to Supplier for full reimbursement of any amounts paid for the returned products, plus transportation charges.
7. Red River may return any purchased product to Supplier, provided the product is in resalable condition, and Red River will receive a credit from Supplier at the previously invoiced or paid price. Red River will prepay transportation for all such returns.
8. In addition to Supplier's standard warranties, Supplier warrants that all products furnished will be merchantable, free from latent and patent defects and in full conformity with any descriptions, specifications or samples furnished by Supplier. Supplier further warrants that neither the products themselves nor any accompanying product information will infringe on the rights of any third party, including any liens or security interests or any intellectual property rights (including any patents, trademarks, copyrights or trade secrets). These warranties will survive acceptance of and payment for the products. The failure of Red River or its customer to reject a product will not constitute a waiver of these warranties. All Supplier warranties run to and for the benefit of Red River's customers and ultimate end users.
9. Supplier grants Red River a non-exclusive, irrevocable, worldwide, royalty-free right to use Supplier's logos, trademarks, service marks, trade names and domain names in connection with any Red River catalogs, websites or other sales and marketing materials, unless otherwise agreed in writing. Red River will use Supplier's intellectual property consistent with reasonable Supplier quality standards communicated to Red River.
10. Supplier shall, at its sole expense, indemnify, defend and hold harmless Red River and its affiliates, shareholders, directors, officers, employees, contractors, agents and customers from and against any and all claims, losses, damages, injury, liability, expenses of whatever form or nature and costs, including but not limited to reasonable attorneys' fees and court costs, resulting from, arising out of, or in any way connected with the Purchase Order based upon: (i) an allegation that any product, service, deliverable, or portion thereof infringes or constitutes wrongful use of any patent, copyright, trademark, trade secret or other proprietary right of any third party; (ii) any act, omission, or failure to act where action was required by Supplier (including its subcontractors or suppliers); and/or (iii) any breach by Supplier of the Purchase Order or any warranties, representations, covenants or obligations as provided for in the Purchase Order. Red River will provide the Supplier reasonable notice of all claims and the opportunity to assume control of the defense or settlement of those portions of the claim for which indemnification is sought, provided that the Red River will have the opportunity to approve any such defense or settlement.
11. Red River shall, at its sole expense, indemnify, defend and hold harmless Supplier and its affiliates, shareholders, directors, officers, employees, contractors, and agents from and against any and all claims, losses, damages, injury, liability, expenses of whatever form or nature and costs, including but not limited to reasonable attorneys' fees and court costs, resulting from: (i) Supplier's use of information or materials provided to Supplier by Red River (provided that no modifications, alterations or additions to said information or materials by Supplier or any third party are wholly or partially responsible for the liability); (ii) infringement of a third party's Intellectual Property Rights directly resulting from Supplier's compliance with Red River's written instructions and/or (iii) any breach by Red River of the Purchase Order or any warranties, representations, covenants or obligations as provided for in the Purchase Order. Supplier will provide Red River prompt written notice of all claims and the opportunity to assume control of the defense or settlement of those portions of the claim for which indemnification is sought.
12. EXCEPT FOR INDEMNIFICATION OBLIGATIONS HEREIN, NEITHER RED RIVER NOR SUPPLIER WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OR ANY LOST REVENUES OR LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
13. **Red River is an equal opportunity employer and federal contractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.**
14. Products sold to Red River by Supplier may be re-sold to the U.S. Government. Where and to the extent applicable, Supplier will comply with the most recent version of the clauses set forth in the Federal Acquisition Regulation (FAR)

52.244-6, entitled "Subcontracts for Commercial Items," and Defense Federal Acquisition Regulation Supplement (DFARS) clauses applicable to subcontracts for commercial items. The full text of FAR clauses may be found at <https://www.acquisition.gov/>. The full text of DFARS clauses may be found at <http://farsite.hill.af.mil/VDFDFArA.htm>. Products purchased hereunder may also be sold to state and local governments. Supplier will comply with applicable laws and regulations concerning wages, workplace safety, rights to association and assembly and nondiscrimination of the state, locality or country in which Supplier's facilities are located. Supplier also warrants and represents that no products furnished to Red River will have been laundered or produced by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children.

15. Red River may terminate the Purchase Order, in whole or in part, immediately in the event that (i) Supplier breaches any material term hereof; (ii) Supplier fails to make timely delivery; (iii) Supplier fails to make progress so as to endanger performance; or (iv) Supplier becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Supplier under any law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors. Any such termination will be without liability to Red River except for completed items delivered to and accepted by Red River, payment for which can be set off against any damages or debts owed to Red River. Red River may require Supplier to transfer title and deliver to Red River any or all property produced or procured by Supplier for performance of the work terminated and Supplier shall be credited with the reasonable value thereof not to exceed Supplier's cost. Supplier will be liable for damages caused by or resulting from its default including but not limited to excess costs of re-procurement. Failure by Red River to take such action, immediately or otherwise, shall not constitute a waiver of said right or any other right Red River may have through contract, law or otherwise.
16. Red River may, at any time, terminate the Purchase Order, in whole or in part, for its convenience upon written notice to Supplier, in which event Supplier shall be entitled to payment for completed items delivered and accepted prior to termination, plus any reasonably incurred settlement expenses.
17. Supplier will comply with all applicable laws and regulations relating to the manufacture, packaging, sale, offering for sale, distribution, use and shipment of the products supplied hereunder, including products containing regulated chemicals or substances.
18. If indicated in the Purchase Order, Supplier warrants compliance with FAR 52.225-5, Trade Agreements Act, for each product furnished.
19. Supplier may not assign the Purchase Order, in whole or in part, its rights or obligations thereunder, or any interest therein (including any claims for monies due or to become due with respect hereto), without Red River's prior express written consent. Any payment to any assignee of any claim under the Purchase Order, in consequence of such consent, shall be subject to set-off, recoupment, or other reduction for any claim that Red River may have against Supplier.
20. All disputes arising out of or relating to this Purchase Order shall be resolved exclusively by a court of competent jurisdiction in the state of New Hampshire, with each party bearing its own costs and attorney's fees. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any such disputes. Until final resolution of any dispute hereunder, Supplier shall diligently proceed with the performance of the Purchase Order as directed by Red River.
21. Notwithstanding anything else contained herein, if a Reseller, Partner, or other Master Agreement has been fully executed and is currently in effect between the Parties, the terms and conditions of said agreement shall take precedence over any inconsistent terms and conditions contained in the Purchase Order. Red River's submission of the Purchase Order is conditioned on Supplier's agreement that any differing or additional terms to those of the Purchase Order, whether communicated orally, in any quote, purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Supplier purports to condition its acceptance of the Purchase Order on Red River's agreement to such differing or additional terms. If Supplier does not accept the Purchase Order in writing for any or no reason, any conduct by Supplier which recognizes the existence of a contract pertaining to the subject matter hereof (e.g. Supplier's acceptance or acknowledgement of the Purchase Order, commencement of performance, or partial or complete fulfillment of the Purchase order, etc.) shall constitute acceptance by Supplier of the Purchase Order and all of these terms and conditions. The Purchase Order, including these Terms & Conditions, is intended by the parties as a complete and exclusive statement of the terms and conditions of their relationship and supersedes all prior or contemporaneous agreements, written or oral, between the parties relating to the subject of the Purchase Order; provided, however that, if the parties have entered into a separate supplier, reseller, master services or similar agreement that continues to be in effect on the date of the Purchase Order, such agreement will supersede these Terms & Conditions. No course of prior dealings between the parties and no usage of the trade will be relevant to supplement or explain any term or condition. These Terms & Conditions may not be changed, amended or supplemented without both parties' written approval. Red River objects to the inclusion of any different or additional terms proposed by Supplier in the acceptance of the Purchase Order and, if such terms are included in Supplier's acceptance, a contract that results will be governed only by these Terms & Conditions.