

**ASARCO LLC – PURCHASE ORDER TERMS AND CONDITIONS (GOODS, 2014)**

**1. Governing Terms:** This Purchase Order constitutes the sole, exclusive and entire agreement by and between Company and Contractor. The terms “Buyer” and “Seller” shall include their respective officers, employees, agents, contractors, suppliers, material-men, successors, assigns and affiliates. Any modifications to this Purchase Order must be in writing and signed by both parties. If any provision herein is held to be invalid, the remaining provisions shall survive and remain in full force and effect. This Purchase Order shall control in the event of any inconsistency in any document referred to or incorporated herein, or provided by the Contractor. The terms of this Purchase Order may not be supplemented, amended, modified or otherwise changed except by a writing executed by all parties hereto. A waiver by Buyer of any right or failure to insist on strict performance under this Purchase Order shall not be construed as a waiver for any subsequent opportunities for performance or to enforce any rights or remedies under this Purchase Order. Delivery of goods constitutes Seller’s acceptance of all terms and conditions of this Purchase Order.

**2. Blanket Order:** When designated as a Blanket Order on the face of this Purchase Order, the terms and conditions set forth in this Purchase Order including this **Paragraph 2** shall govern the transaction between Buyer and Seller. As a Blanket Order, the terms and conditions of this Purchase Order include and cover Seller’s goods, the prices, the Buyer’s locations and the period of performance identified on the face of or in an addendum to this Purchase Order. Any estimates of potential quantities of goods to be acquired by Buyer are not intended and shall not be construed by Seller as any form of guarantee or commitment by Buyer to acquire any particular quantity of goods from Seller. Buyer’s requirement, if any, for goods is subject to change and may increase or decrease for any reason or no reason including but not limited to changes in Buyer’s policies, practices, and procedures. Unless otherwise stated on the face of this Purchase Order, the prices included in the Blanket Order shall be firm and shall not change throughout the term of the Blanket Order. The Blanket Order may be renewed at the Buyer’s option for additional terms of one year or more provided Buyer provides Seller with written notice thirty (30) days prior to the expiration of the Blanket Order.

**3. Payment And Invoice:** Payments shall be made by Buyer to Seller net thirty (30) days after the date on the invoice or as otherwise specified on the face of this Purchase Order. Payment shall only become due on the date all ordered goods have been received, approved and accepted by Buyer, and Buyer has received a valid invoice from Seller, each noting Buyer stock codes. Unless otherwise indicated by Buyer on the face of this Purchase Order, Seller agrees to quote and invoice Buyer a total delivered price, which shall include all taxes, fees, insurance, and FOB Destination for all ordered goods.

**4. Shipments:** All goods must be forwarded as designated by Buyer. When the goods covered by this Purchase Order shall aggregate a carload shipment or more, Seller must forward in carload lots, unless duly authorized in writing by Buyer to ship in less than carloads. If this Purchase Order aggregates less than a minimum carload, Seller must forward the entire quantity at one time unless otherwise authorized in writing by Buyer. Shipments will not be considered as completed until a bill of lading or similar receipt is received, each noting Buyer stock codes. Unless otherwise indicated

by Buyer on the face of this Purchase Order, Seller shall deliver all goods FOB destination and shall pay all costs and expenses associated with shipping and delivery to Buyer.

**5. Packing And Cartage:** Seller must provide proper and adequate packaging in accordance with the best commercial practices. Buyer reserves the right to reject any shipment that it believes was not packaged adequately. Damage to any goods not properly packed will be charged to Seller. Unless otherwise indicated by Buyer on the face of this Purchase Order, Seller may not charge Buyer for packing, boxing or cartage. Buyer will receive the benefit of any decrease in freight charges between time of quotation and date of shipment, where such charges are included in the price originally quoted.

**6. Warranty And Inspection:** Seller warrants that all goods shall: conform to the specifications, drawings, samples or other description agreed to by Seller and Buyer; meet the highest industry standards for merchantability and workmanship; be free from all defects; and comply with all applicable laws and regulations. Such warranties shall survive Buyer's inspections, tests and acceptance for a period, the later of: (i) twelve (12) months from the date of Buyer's installation or use of the goods or (ii) eighteen (18) months from the date of Buyer's acceptance of the goods. If any goods delivered are defective or otherwise not in conformity with the requirements of this Purchase Order, Buyer, in addition to its other rights including the right to recover direct, consequential, incidental or exemplary damages (including business and economic losses), attorney's fees and costs, may reject the same for full credit or require proper correction, replacement or completion thereof at Seller's expense. All rejected goods may either be returned to Seller at Seller's expense, or may be held by Buyer for disposition at Seller's risk and expense. Seller shall at all reasonable times permit inspection and testing by Buyer of all items, work in process, materials and workmanship covered by this Purchase Order.

**7. Title:** Title to goods furnished under this Purchase Order shall pass when they are delivered and accepted by Buyer at their final destination in compliance with the governing FOB terms, and Buyer has determined that such goods satisfy Seller's warranty. Risk of loss, injury or destruction of the goods shall be borne by Seller until title passes to Buyer.

**8. Product Changes:** The quantity, package or unit size of the goods ordered, must not be changed without Buyer's prior written consent.

**9. Termination:** Buyer, upon five (5) days written notice ("Termination Notice") to Seller, may, in its sole and absolute discretion, terminate this Purchase Order in whole or in part. Upon receipt of such Termination Notice, Seller shall, unless the Termination Notice directs otherwise, immediately discontinue delivery of the goods under this Purchase Order. If this Purchase Order is terminated, Seller shall be entitled to recover the balance due on the Purchase Order price only for the goods received, approved and accepted by the Buyer up through the date of termination, less previous payments made and any costs, losses, damages and expenses Buyer has incurred as a result of Seller's actions under the terminated or canceled Purchase Order. By exercising its right to terminate, the Company does not waive any of its rights, remedies or damages against Contractor arising out of any services performed prior to the termination, including any breach or default of this

Purchase Order. In no event may Seller recover from Buyer any damages, direct, consequential or otherwise or lost profits arising from termination of this Purchase Order.

**10. Reprourement:** If Buyer terminates this Purchase Order in whole or in part for cause, Buyer may reprocure substitute goods that are comparable to those included in the terminated Purchase Order. Seller shall be liable for any excess or cover costs for those substitute goods.

**11. Liability And Indemnification:** Seller agrees to indemnify, defend and hold harmless Buyer and its affiliates, directors, officers, employees, representatives and agents from and against all claims, suits or demands of any kind and description, and from and against all alleged or actual damages, loss, fines or penalties which Buyer or Buyer's property may sustain, incur, suffer or receive and which arise or allegedly arise in whole or in part from Seller's performance under this Purchase Order or from any other conduct, actions or inactions by Seller. Seller's indemnity obligations include, but are not limited to payment of all judgments, legal fees and expenses incurred by Buyer. Buyer's rights and Seller's indemnity obligations hereunder shall apply with full force and effect even if Buyer or any third party is or may be liable or responsible in part for the claim, suit, demand, damage, loss, fine or penalty sustained, incurred, suffered, or received. However, Seller's indemnity obligation shall apply for the amount and to the extent that Seller is at fault for or the cause of such loss or damages. Buyer rights and Seller's obligations hereunder shall survive the expiration or termination of this Purchase Order.

**12. Intellectual Property Liability:** Seller agrees to indemnify, defend and hold harmless Buyer against any claims, suits, actions or proceedings involving the infringement of intellectual property rights, and which arise from or relate to the use, sale or receipt of the goods acquired hereunder. Seller agrees to pay for any costs of such defense, including legal fees. If Buyer is enjoined from using the goods hereby provided, Seller shall reacquire them from Buyer at the original order price plus transportation, installation (if any), and all other damages or costs sustained by Buyer which arise from Buyer's use of the goods.

**13. Compliance With All Laws And Environmental Safety And Health Policy:** Seller acknowledges that compliance with laws and providing a safe and healthy workplace and protection of the environment is Buyer's priority and agrees to abide by that priority in all of its actions that relate to Buyer. Seller agrees, represents and warrants in providing goods hereunder that it has copies of and will fully comply with all applicable federal, state and local laws, rules, regulations, standards and other governmental requirements including but not limited to: the Federal Occupational Safety and Health Act ("OSHA"), the Federal Mine Safety and Health Act ("MSHA"), and the statutes enforced by the U.S. Environmental Protection Agency, their state and local equivalents and all regulations, policies and orders issued by or pursuant to them (collectively, the "Acts"). The inclusion in this Purchase Order of any specific laws or regulations does not and is not intended to relieve Seller of its obligation to comply with all laws, rules, statutes, regulations and ordinances. Seller further agrees that any of its officers, agents, employees, contractors or subcontractors that enter Buyer's premises will be trained, certified and/or licensed both as required by such laws and Acts and in the methods and procedures for compliance with them. Seller acknowledges and agrees that it has instituted a policy that mandates compliance with this provision.

**14. Environmental Health And Safety Provisions:** Seller agrees to comply with all of Buyer's safety, health and environmental rules and procedures relating to work performed on, and access and use of, Buyer's facility, including but not limited to the following general safety and health and environmental provisions:

- a. Seller agrees to limit its travel on Company's facilities solely to that necessary for performing this Purchase Order and require that its employees, agents and subcontractors be accompanied by Company's personnel, unless a particular employee, agent or subcontractor is authorized in writing to be unaccompanied.
- b. Seller agrees to become familiar with and train its employees and those of its subcontractors in the characteristics of the site, including, but not limited to, any hazards, restricted areas, protective measures and applicable emergency and evacuation procedures.
- c. Seller agrees to be subject to Company's contract compliance monitoring, but also agrees that such monitoring or the lack thereof does not relieve Seller of any duties and/or obligations under this Purchase Order or applicable laws.
- d. Seller shall immediately notify Company (and if requested provide a detailed written report) of every accident or incident involving injury to personnel or occupational illness or damage to Company's property or environmental incident or event occurring in connection with this Purchase Order and agrees to assist Company with any investigation thereof. Seller also agrees to record and report all required information by and to all appropriate federal, state and local regulatory agencies and to provide notice of and copies of such reports and information to Company. Seller shall also report to Company employee days and hours worked while on Company's premises.

**15. Effect Of Buyer's Voluntary Actions:**

- a. Seller's duties of indemnity towards Buyer pursuant to Paragraph 11 shall apply with full force and effect even if Buyer provides Seller with safety, health and environmental information, training, materials, inspections, goods or services, or otherwise voluntarily assists Seller in protecting people and the environment and meeting Seller's compliance obligations hereunder.
- b. Seller acknowledges that it is fully and solely responsible for compliance with all laws and regulations and that any assistance provided by Buyer as referenced herein is provided voluntarily and solely for the purposes of promoting the parties' mutual interest in health, safety and the environment.
- c. Any actions by Buyer in volunteering environmental, safety and health information, training, materials, equipment and services shall not be alleged to, nor constitute a change in, or diminish or relieve Seller of any contractual or governmental responsibilities in these areas and shall not constitute, nor be alleged by Seller in any inspection, investigation or legal proceeding to constitute control, supervision or direction of their employees.

**16. Environmental Safety And Health Violations And Assessments:** Seller acknowledges that



violations by Seller of health, safety, environmental and other statutory and regulatory laws and authority may result in the imposition of civil and/or criminal fines and penalties or in other damage and loss to both Buyer and Seller. Seller agrees that Buyer shall have the right to assess or back-charge Seller an amount equal to that which the Acts are authorized to assess or propose for violations whenever Buyer determines that Seller has committed such a violation. Buyer also shall have the right to inspect or audit Seller's records, conduct or actions related to this Purchase Order for the purpose of monitoring Seller's compliance with and for enforcing the terms of this provision. Buyer's remedies against Seller for violations of the environmental, health and safety provisions of this Purchase Order shall not be limited to those set forth above.

**17. Insurance And Benefits:** If this Purchase Order requires the employees, officers, agents or subcontractors of Seller to enter, or results in any of them entering Buyer's premises, facility or site or the Buyer otherwise requires it, Seller shall: (a) carry Liability Insurance in the amount of two million dollars (\$2,000,000) and such other coverage amount as may be specified by Buyer in an addendum hereto; (b) also carry Workmen's Compensation Insurance as required by the laws of the state in which the work is performed; and (c) immediately furnish to Buyer at the time of receipt of this Purchase Order a certificate or other evidence of such insurance identifying Buyer as an additional insured. All of Seller's policies shall contain an endorsement waiving the Insurer's right of subrogation against the Buyer.

**18. Assignment:** This Purchase Order will be binding upon and enforceable only by the parties, their respective successors and permitted assigns. Seller shall not assign or transfer this Purchase Order or any moneys due or to become due to it hereunder, without the prior written consent of Buyer, which consent may be withheld in Buyer's sole discretion. Any assignment or transfer without the prior written consent of the Buyer shall be null and void.

**19. Claims:** In the event Seller sustains a delay, damage or loss of any kind or encounters a change or unexpected condition during performance of this Purchase Order, Seller's sole remedy, if any as applicable against Buyer shall be an award of an extension of time for performance of this Purchase Order. In no event may Seller recover any monetary relief from Buyer, including but not limited to consequential damages or otherwise.

**20. Disputes:** Any dispute regarding this Purchase Order shall first be submitted to non-binding mediation before a mediator acceptable to the parties. If the parties cannot agree upon a mediator or if the dispute is not resolved within thirty (30) days of a request for mediation, then the dispute shall be resolved by binding arbitration to occur in the city closest to Buyer's facility originating this Purchase Order. Such arbitration shall be conducted by one (1) arbitrator under the Rules of Commercial Arbitration of the American Arbitration Association. A demand for arbitration may be made upon expiration of the time period set forth above. The resulting decision of the arbitrator shall be final and binding on the parties. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. No request or demand for mediation or arbitration shall be made after the date on which the applicable statute of limitations would expire.

**21. Governing Law:** This Purchase Order, including performance and all disputes hereunder, shall be governed by the laws of the state or commonwealth in which Buyer will receive the goods.

**22. Notice:** Any written notice required under this Purchase Order shall be sent to Buyer's and Seller's address appearing on the face of this Purchase Order or to such other address as either party shall have specified by notice in writing to the other party.

**23. Right To Audit:** Seller shall establish and maintain a reasonable accounting system, which enables ready identification of Seller's cost of goods and use of funds. Buyer may audit Seller's records any time before three years after final payment to verify Buyer's payment obligation and use of Buyer's funds. This right to audit shall include subcontractors in which goods are subcontracted by Seller. Seller shall insure Buyer has these rights with subcontractor(s).

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