



# COMMERCIAL OFF THE SHELF PURCHASE ORDER TERMS AND CONDITIONS

## REFERENCE GUIDE

### 1. Acceptance

This purchase order is an offer by The Geneva Foundation (Geneva) (the "Buyer") for the purchase of the goods (the "Goods") or services (the "Services") specified, from the party to whom the purchase order is addressed (the "Seller") in accordance with and subject to these terms and conditions (the "Terms"; together with the terms and conditions on the face of the purchase order, the "Order"). This Order will be deemed accepted by the Seller upon the first of the following to occur: (a) Seller making, signing, or delivering to Buyer any letter, form, or other writing or instrument acknowledging acceptance; (b) any performance by Seller under the Order; or (c) the passage of ten (10) days after Seller's receipt of the Order without written notice to Buyer that Seller does not accept. This Order, together with any statement of work, specifications, drawings, or any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order, unless a separate overriding written contract has been entered into and signed by the parties. The Order expressly limits Seller's acceptance to the terms of the Order. These Terms expressly exclude any of Seller's terms and conditions of sale or any other document issued by Seller in connection with this Order. Seller shall notify Buyer immediately of any ambiguities, express conflicts, or discrepancies in the statement of work, specifications, drawings, or any other documents that are a part of the Order, and shall comply with the reasonable determination of Geneva in such matter. Any questions regarding the Terms should be made to the Procurement Services Manager at [PSD@GenevaUSA.org](mailto:PSD@GenevaUSA.org) or 253-383-1398. Headings and numbering in the Order are for convenience of reference only.

### 2. Shipment and Delivery

Delivery shall be made in accordance with the Terms of this Order. The Order number must appear on all documents pertaining to the Order, invoices, packing lists, correspondence, and all shipping documents. Seller shall not substitute material or ship more than the quantity ordered. Seller shall be solely responsible for and pay, all costs of delivering the Goods to the delivery point ("Delivery Location"), including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar analogous taxes on imports/exports of the Goods ("Customs Duties"). Seller will take all reasonable steps to minimize Customs Duties costs. Seller agrees to ensure that shipments are properly packed and described in accordance with Buyer's specifications and applicable carrier regulations. On all shipments, a packing list shall accompany each container and shall describe the contents of that container and reference the appropriate Order and item number. Seller agrees to ship via carrier specified by Buyer, if any. Seller shall bear any premium freight cost incurred by Buyer or Seller beyond that specified by Buyer. Seller is responsible for all shipments that are damaged in transit due to improper packaging, improper marking, improper judgment, or other act or omission of the Seller.

Seller shall deliver the Goods and/or perform the Services at the Deliver Location, and on the date(s) specified in this Order (the "Delivery Date"). If no Delivery Date is specified, Seller shall deliver in full within a reasonable



time of receipt of the Order. Timely delivery is of the essence. If Seller fails to deliver the Goods or Services in full, on the Delivery Date, Buyer may terminate the Order immediately and Seller shall indemnify Buyer against any losses, damages, and reasonable costs and expenses attributable to Seller's failure to deliver.

All goods received in excess of Order requirements shall be subject to return for credit at Seller's expense. Due to the nature of business at Buyer, Seller is required to send a packing slip along with the invoice. All invoices and packing slips are to be sent to [AP@GenevaUSA.org](mailto:AP@GenevaUSA.org) or The Geneva Foundation, Attn: Accounts Payable, 917 Pacific Ave, Suite 600, Tacoma, WA 98402. Questions related to payment should be directed to the Accounts Payable Division at [AP@GenevaUSA.org](mailto:AP@GenevaUSA.org) or 253-383-1398.

### **3. Inspection**

Buyer reserves the right to inspect the Goods or Services on or after the Delivery Date. Buyer, at its sole option, may reject all or any portion of the Goods or Services if it determines the Goods or Services are defective or nonconforming. If Buyer requires replacement of the Goods or re-performance of Services, pursuant to Section 4, Seller shall promptly replace the nonconforming Goods or re-perform nonconforming Services. If Seller fails to timely deliver replacement Goods or Services, Buyer may replace them with Goods or Services from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 8 and 9. Any inspection or other action by Buyer under this Section shall not affect Seller's obligations under the Order, and Buyer shall have the right to further inspection after Seller takes remedial action.

### **4. Cumulative Remedies**

The rights and remedies under this Order are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise. If Seller is in breach of the warranties set out in Section 9, Seller will, at its sole cost, replace or repair the Goods or re-perform Services to Buyer's satisfaction.

### **5. Price and Payment**

The price of the Goods or Services is the price stated on the face of this Order (the "Price"). Seller shall invoice Buyer for the Order within thirty (30) days of delivery. Unless otherwise stated in the Order, Buyer shall pay all properly invoiced amounts due to Seller within thirty (30) days after receipt of such invoice, except for any amounts disputed by Buyer. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute. Without prejudice to any other right or remedy, Buyer reserves the right to set off any amount owing to it by Seller against any amount payable by Buyer to Seller. Payment of an invoice is not evidence or admission that the Goods or Services meet the requirements of the Order.

### **6. Hazardous Wastes**

If at any time Seller generates any hazardous waste(s) on Buyer's property or site, as defined in 40 C.F.R. §261.3, Seller will immediately notify Buyer and Seller will comply with Buyer's policies and practices, and any applicable law, regarding management of hazardous wastes.

### **7. Change Order**

Buyer may, from time to time, initiate changes by issuing to Seller written notices (each, a "Change Order") that alter, add to, or deduct from the Goods or Services, but that are otherwise subject to the Terms of this Order. The Change Order is indicated by the version number on the Order. Buyer shall have the right to make changes in the instructions, specifications, and drawings for Goods or Services covered by the Order. If Seller



believes that any such change increases or decreases the price or time of delivery for such Goods or Services, Seller shall so notify Buyer (in writing, with adequate supporting documentation) within fifteen (15) days after receipt of written direction from Buyer to make such change. Seller's request for any adjustments shall be deemed waived unless submitted in writing within such fifteen (15) days.

#### **8. Termination for Convenience of Buyer**

Buyer reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.

#### **9. Termination for Cause**

Buyer may also terminate this order or any part hereof for cause in the event of any default by the Seller, or if the Seller fails to comply with any of the Terms of this Order. Late deliveries, deliveries of Goods or Services which are defective or which do not conform to this order, and failure to provide Buyer, upon request, reasonable assurances of future performance shall all be causes allowing Buyer to terminate this order for cause. In the event of termination for cause, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all damages sustained by reason of the default which gave rise to the termination.

#### **10. Warranties**

Seller warrants to Buyer that for a period of eighteen (18) months from the Delivery Date, all Goods, Services or Goods furnished in connection with Services will: (a) be new and free from any defects in workmanship, material and design; (b) conform to applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party's intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance. If Buyer gives Seller notice of noncompliance, Seller shall, at its own cost and expense, promptly replace or repair the nonconforming Goods or Services.

#### **11. Indemnification**

Seller hereby agrees to assume the risk of and to release, defend, indemnify, and hold harmless Buyer, and Buyer's customers, and each of their related entities, directors, officers, employees, agents, and assigns (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses") arising out of or occurring in connection with Seller's performance of its obligations or Seller's negligence, willful misconduct or breach of the Terms of this Order or possession of the Goods or Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.



## **12. Confidential & Proprietary Information**

All non-public, confidential or proprietary information of the Buyer and or its customers, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) rightfully and legally known to the Seller at the time of disclosure; or (c) rightfully and legally obtained by the Seller on a non-confidential basis from a third party.

## **13. Assignments and Subcontractors**

Neither the Order nor any part thereof shall be assigned or transferred by Seller without the prior written consent of Buyer, and any assignment or transfer without such consent shall be void. Seller shall not contract work under the Order totaling more than one-third of the Order value to any third party without prior written approval by Buyer.

## **14. Compliance with Law**

Seller warrants and represents to Buyer that it is in compliance with and shall remain in compliance during performance of this Order and ensure that its employees, agents, contractors and subcontractors (the "Personnel") comply with Buyer's Seller Code of Ethics, available on Buyer's website, and all applicable laws, regulations and ordinances, including, without limitation, 1) Executive Order 11246 as amended and all regulations promulgated pursuant to that Executive Order including but not limited to the provisions of paragraphs (1) through (7) of the "Equal Opportunity Clause" and the "Certification of Nonsegregated Facilities", each of which is incorporated herein by reference, 2) Section 503 of the Rehabilitation Act of 1973 including the applicable parts of the affirmative action clause entitled "Affirmative Action for Handicapped Workers" (41 CFR 60-741.4) incorporated herein by reference, 3) the Vietnam Era Veterans Readjustment Assistance Act (30 USC §2012) including the applicable parts of the affirmative action clause entitled "Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era" (41 CFR 60-250.4) incorporated herein by reference, 4) Executive Order 13496 "Notification of Employee Rights Under Federal Labor Laws" (29 CFR Part 471, Appendix A to Subpart A) also incorporated herein by reference, 5) Seller agrees to comply with all applicable commercial and public anti-bribery laws, including, without limitation, the US Foreign Corrupt Practices Act and the UK Bribery Act and 6) Seller hereby represents and warrants that neither Seller, nor any persons or entities holding any legal or beneficial interest whatsoever in Seller, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons." If the foregoing representation is untrue at any time, an event of default will be deemed to have occurred without the necessity of notice to Seller.



Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods or Services under this Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. If Seller fails to comply with the laws, orders, rules, ordinances and regulations and as a result Buyer is fined, Seller agrees to pay the fine and costs incident thereto or reimburse Buyer for payment. To the extent that Seller's personnel are required to enter onto Buyer's site or property, Seller shall ensure that personnel comply with Buyer's health, safety and environmental policies and standards. Seller further agrees that it shall not engage in the employment of child, forced, indentured, involuntary, prison, or uncompensated labor.

Seller agrees that, in performance of the Order, Seller will comply with all applicable laws, statutes, rules, regulations, and orders of any state, country, or political subdivision thereof.

#### **15. Choice of Law**

This Order and any contract formed hereunder, shall be governed by, and construed under the internal laws of the State of Washington, without regard to principles of conflict of law, as the same may be from time to time in effect, including, without limitations the Uniform Commercial Code as in effect in the State of Washington.

All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the state, province or territory identified in the address for the Buyer on the Order (Washington), excluding its choice or conflict of law rules. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal and/or state, provincial or territorial courts in the state, province or territory identified in the address for the Buyer on the Order (Washington) and the courts of appeal from them.

#### **16. Title and Risk of Loss**

Unless otherwise specified in the Order, risk of loss of the Goods or Services remains with Seller and title will not pass to Buyer until the Goods or Services are delivered to and accepted in writing or 60 days after receipt of goods or services by Buyer at the Delivery Location.

Seller warrants full and unrestricted title to Buyer for the Goods and Services furnished by Seller under the Order, free and clear of any and all liens, restrictions, reservations, security interests, or encumbrances. Transfer of title shall occur upon acceptance of Goods and Services or 30 days after receipt of Goods and Services, whichever is earlier. If Buyer makes progress payments to Seller under the Order, title to the Goods or Services ordered hereunder (including work in progress, components thereof, and materials therefor) shall pass to Buyer at the time the first progress payment is made or as otherwise specified in the Order. Buyer shall have the right, at Buyer's option, to inspect and verify that said Goods have been identified as Buyer's property. Care, custody, and control of such goods remain with Seller until such time as Buyer takes physical possession or otherwise agrees in writing by Change Order to the Order.

#### **17. Force Majeure**

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party ("Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of



God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike, or embargoes. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Seller from performance for a continuous period of more than fifteen (15) business days, Buyer may terminate this Order immediately by giving written notice to Seller.

#### **18. Waiver and Release of Liens**

Upon Seller receipt of amounts properly invoiced, Seller waives and releases all rights to, for itself and its subcontractors, and at its sole cost shall obtain prompt removal of any lien fixed against Buyer, for Goods or Services performed under this Order.

Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any other terms, conditions or privileges whether of the same or similar type.

#### **19. Setoff**

All claims for money due or to become due from Buyer shall be subject to deduction or set off by the Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.

#### **20. Relationship of the Parties**

The Seller is an independent contractor of Buyer. Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever.

#### **21. Kickbacks and Gratuities**

Buyer, by written notice to Seller, may terminate the right of Seller to proceed or continue under the Order if it is found that any kickback or any gratuity in the form of money, entertainment, gift, or other thing of any value, was offered or given by Seller, or any agent or representative of Seller, to any officer or employee of Buyer with a view toward securing the Order or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the Order. If the Order is terminated under this provision, Buyer shall be entitled to the same remedies against Seller as Buyer could pursue in the event of a material breach of the Order by Seller.

#### **22. Notices**

All notices, consents, claims, demands, waivers and communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (all fees pre-paid), facsimile (with confirmation of transmission), email or certified or registered mail (return receipt requested, postage prepaid). A Notice is effective only upon receipt of the receiving party, and if the party giving the Notice has complied with the requirements.

#### **23. No Waiver**



Except as otherwise expressly provided, no failure or delay of either party in exercising any power, right, or remedy will operate as a waiver thereof, nor will any single or partial exercise of any power or right preclude any other or further exercise thereof or the exercise of any other power, right, or remedy.

#### **24. Inconsistent Terms**

The terms found on the face of this Order shall govern over the terms and conditions herein. Any separate written overriding agreement signed by both parties shall govern over the terms of the Order.

#### **25. Services**

Any Seller that may perform Services represents itself as qualified and able to perform. Seller shall perform Services pursuant to the industry standard of care. Buyer will furnish materials, equipment and machinery only if and to the extent set forth in the Order. Seller will report immediately to Buyer any event or circumstance which Seller knows or reasonably suspects is, or results from, a violation of Buyer's policies or law set forth herein. Seller will, at its sole cost and expense, repair or replace any real or personal property belonging to Buyer that Seller, its employees or agents may damage, destroy or remove while performing or result from performing this Order.

In the event the Order requires the performance of service work or installation of goods by Seller upon any property, premise, or project of Buyer or its customer, Seller shall examine the premises to determine whether they are safe for such Services and shall advise Buyer promptly of any situation it deems unsafe. Seller shall maintain and, upon Buyer request, shall provide written proof of the following insurance coverage: Worker's Compensation in amounts required by law and Employer's Liability Insurance with minimum limits of \$500,000 per occurrence; Comprehensive General Liability with a combined single limit of \$2,000,000 per occurrence for bodily injury and property damage, protecting Seller against bodily injury, including death, and property damage arising out of Seller's operations; Automobile Liability Insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury, contractual endorsement, products, hazards, environmental liability, and property damage covering use and operation of owned, non-owned, and hired vehicles. If Seller subcontracts any of the work to a third party, Seller shall require such third party to furnish the same insurance and indemnity as are required of Seller hereunder. While on the premises of Buyer or its customer, Seller and its employees shall comply with all applicable safety and health laws, regulations, and ordinances and with Buyer's or its customer's safety and plant rules. Seller shall keep said premises and the vicinity thereof clean of debris caused by its work, and upon completion of work, shall leave the premises clean and ready for use. Upon request of Buyer and at no expense to Buyer, Seller shall promptly remove from said premises any person under the control of Seller who violates any of the aforesaid safety, health, or plant laws, regulations, ordinances, or rules, who may cause or threaten to cause a breach of the peace, or who is otherwise objectionable to Buyer or its customer.

#### **26. Limitation of Liability**

Except for Seller's liability for intellectual property right infringement or for breach of confidentiality obligations, or for improper marking(s) implicating patent protection, in no event will either party be liable for special, indirect, consequential or incidental damages even if that party has been advised of the possibility of such damages. In no event will Buyer's liability hereunder for damages of any nature exceed the Order value. No action, regardless of form, arising out of the transactions under the Order, may be brought by either party more than one (1) year after the cause of action has accrued. Buyer and Seller expressly acknowledge that the



limitations contained in this Section represent the parties' agreement based upon the level of risk associated with the performance of their respective obligations hereunder. This Section will survive the expiration or termination of the Order.

**27. Severability**

If any term or provision of this Order is found invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term of this Order or invalidate or render unenforceable such term in any other jurisdiction.

**28. Flow down clauses**

The Seller certifies that when they are awarded with and accept a Buyer Order that they are not a debarred or disqualified supplier. The Seller agrees to follow all applicable Federal Acquisition Regulation (FAR) and Uniform Guidance Regulations.

It is Buyer's preference for the Seller to register with the Federal System for Award Management ("SAM") and to maintain an active SAM registration at all times during its performance. This is not require for Seller executing an Order under \$100,000.00.

The Seller agrees to comply with all statutes and regulations, including the Federal Acquisition Regulations ("FAR"), applicable to the purchasing thresholds outlined below.

The following contract clauses prescribed under the FAR and the DFARS are incorporated into this Vendor Agreement by reference. The Seller agrees to be bound by the obligations of the "Contractor" under all such clauses. Also to the extent that the term "Government" or the phrases "United States" or "Contracting Officer" as used in any of these clauses denotes a contracting party, the same shall also mean Buyer.

The Seller shall perform its obligations under the Order in compliance with the clauses incorporated herein by reference unless specifically exempted by law or regulation. The Seller shall cooperate with Buyer in evaluating the Seller's compliance with these clauses. The Seller shall allow Buyer and/or the Government access to the Seller's facilities, records, and personnel to the extent that Buyer, in its sole discretion, deems necessary to evaluate the Seller's performance under the Order or its compliance with the clauses herein incorporated by reference.

The clauses incorporated herein by reference carry the same force and effect as if they were set forth in full text. The full text of these clauses is available at <http://www.acquisition.gov/far> or <http://farsite.hill.af.mil>.

Clauses Applicable to All Vendors	
Clause	Title (Effective Month/Year)
<a href="#">52.204-16,</a>	Commercial and Government Entity Code Reporting
<a href="#">52.204-18,</a>	Commercial and Government Entity Code Maintenance
<a href="#">52.209-7,</a>	Information Regarding Responsibility Matters, as prescribed in <a href="#">9.104-7(b)</a> .
<a href="#">52.209-12,</a>	Certification Regarding Tax Matters, as prescribed at <a href="#">9.104-7(e)</a> .
<a href="#">52.222-56,</a>	Certification Regarding Trafficking in Persons Compliance Plan, in solicitations as prescribed at <a href="#">22.1705(b)</a> .





<a href="#">52.225-19,</a>	Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in <a href="#">25.301-4</a> .
<a href="#">52.232-40,</a>	Providing Accelerated Payments to Small Business subcontractors, as prescribed in <a href="#">32.009-2</a> .