



CBRE RICHARD ELLIS, INC. TERMS AND CONDITIONS OF PURCHASE

1. Acceptance:

This Purchase Order (referred to as the "Agreement") and its CB Richard Ellis, Inc. ("CBRE") Terms and Conditions become the agreement ("Agreement") between Supplier and CBRE for the purchase of goods described on the face of the Purchase Order (referred to as "Items") upon Supplier's acknowledgement or commencement of performance. This Agreement can be accepted only on these terms and conditions. No change, proposed term, modification or revision of this Agreement will be effective unless in writing and signed by a duly authorized representative of CBRE.

SIGNATURES NOT REQUIRED: ACCEPTANCE OF THIS PURCHASE ORDER AND ITS EXECUTION BY SUPPLIER IN WRITING IS HEREBY WAIVED BY THE PARTIES HERETO. ANY PERFORMANCE BY SUPPLIER PURSUANT TO THIS PURCHASE ORDER SHALL BE DEEMED TO EVIDENCE ITS FULL ACCEPTANCE OF ALL OF THE TERMS HEREOF INCLUDING, WITHOUT LIMITATION, THE ATTACHED TERMS AND CONDITIONS

2. Proprietary Information:

- A. General: CBRE's "Proprietary Information" shall include without limitation, specifications, samples, drawings, manuals and other technical business, trade secret, and confidential information provided to Supplier by CBRE (including this Agreement) during the term of or in connection with the performance of this Agreement. CBRE grants to Supplier the right to the Proprietary Information solely for the purpose of providing Items to CBRE. Supplier will not disclose and will not use any Proprietary Information for any other purpose. Proprietary Information shall be clearly marked by Supplier as CBRE's property and returned to CBRE upon request or completion of Purchase Order.
- B. Equitable Relief: Supplier agrees that CBRE would suffer irreparable harm for which monetary damages are an inadequate remedy, and that equitable relief is appropriate if Supplier were to breach or threaten to breach any obligation regarding Proprietary Information.
- C. Name or Logo: Supplier shall not use or display CBRE or Owner's name or logo, and shall not utilize other trademarks or servicemarks of CBRE or Owner, without CBRE's prior written consent. Neither Supplier nor its agents or subcontractors may issue any press, media or publicity releases or give statements to the media identifying CBRE or relating to this Agreement without CBRE's prior written consent.

3. Warranty:

- A. General: Supplier warrants that all Items shall be new in all respects and not used, reworked, refurbished or rebuilt, unless otherwise approved by CBRE and free from defects in design, workmanship, material, and manufacture. Items shall be of merchantable quality and be fit and suitable for the purpose intended by CBRE; and shall comply with the requirement of this Agreement. The foregoing warranties are in addition to all other warranties, expressed or implied, and survive delivery, inspection, acceptance, or payment by CBRE.
- B. Infringement: Supplier warrants that all Items, the sale of Items by Supplier, and the use or resale of Items by CBRE are and will be free of liability or infringement of, or claim of royalties for, patent rights, copyright trademark, trade secrets, or confidential or proprietary intellectual property rights, mechanic's liens and any other encumbrances (collectively "Rights and Encumbrances").

4. Change Notification:

Any change to or deviation from the performance parameters specified in the attached CBRE Purchase Order must be submitted to CBRE for approval by a duly authorized representative of CBRE prior to shipment or start of service.

5. Title; Inspection:

Title to the Items shall pass directly from Supplier to CBRE at the f.o.b. point indicated in this Agreement, or as otherwise specified in this Agreement, subject to CBRE's right to reject upon inspection. Items are subject to inspection and test by CBRE at all times and places, including during the period of manufacture, and in any event, at any time, prior to final acceptance. CBRE reserves the right to audit the Supplier's facility and quality procedures to ensure that items meet CBRE's quality requirements. Items are not accepted by reason of any preliminary inspection or payment of any invoice. If rejected or required to be corrected, Items shall be either replaced or corrected by and at the expense of Supplier as directed by CBRE.

6. Limitation of Liability:

In no event shall CBRE or Owner be liable to Supplier for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental or indirect loss or damage (in tort, contract or otherwise) under or with respect to this Agreement or any Purchase Order or from any failure of performance related hereto regardless of the cause.

7. Responsibility for Goods; Risk of Loss:

Notwithstanding any prior inspections, Supplier bears all risks of loss, damage, or destruction to Items until final acceptance by CBRE at CBRE's delivery destination. Supplier bears all such risks with respect to any Items rejected by CBRE, provided, however, that CBRE shall be responsible for loss occasioned solely by the gross negligence of CBRE's employees acting within the scope of their employment.

8. No Assignment by Supplier:

Neither Supplier's interest in this Agreement nor in any Purchase Order (including, but not limited to, any compensation due under this Agreement) may be assigned or encumbered, nor may its duties, obligations and responsibilities hereunder or under any Purchase Order be delegated or subcontracted further to any third party, without the prior express written consent of CBRE in each instance. Any attempt by Supplier to accomplish the foregoing without the express written consent of CBRE in each instance shall be deemed null and void and of no force or effect. CBRE may, without the consent of Supplier, and at CBRE's sole discretion, freely assign its interest in this Agreement and/or in any Purchase Order. Any or all of the representations, warranties and covenants of Supplier contained in this Agreement may be assigned by CBRE to Owner and thereupon shall be enforceable by Owner.

9. Cancellation:

- A. General: CBRE may terminate this Agreement in whole or in part by written or electronic notice if Supplier: (1) fails to deliver Items in accordance with specified delivery times; (2) fails to replace or correct defective Items as CBRE requires; (3) fails to comply strictly with any provision of, or repudiates or anticipatorily repudiates this Agreement. (4) becomes insolvent, files a petition for relief under bankruptcy, insolvency or similar law, makes an assignment for the benefit of its creditors, or takes any action for (or anticipation of) any of the foregoing; or there is a material change in control or ownership of Supplier's business.
- B. Upon Termination: Upon termination pursuant to this Section, Supplier shall: (1) supply any portion of the Items for which this Agreement is not terminated; (2) be liable for additional costs, if any, for the purchase of similar goods to cover such default. CBRE's rights and remedies as described herein are in addition to any other rights and remedies provided at law or in equity.

10. Indemnification:

- A. Indemnification by Supplier: Supplier shall defend, indemnify and hold harmless CBRE and Owner, and their respective subsidiaries, affiliates, officers, directors, employees, agents and invitees from and against any and all claims, injuries, damages, obligations, liabilities, causes of action, suits, judgment or costs including reasonable attorneys' fees, arising directly out of any act, error, or omission of Supplier or its subcontractors in the performance of any Purchase Order or any actual breach by Supplier of any representation, warranty or

agreement made by Supplier in this Agreement. This indemnification includes any intentional, reckless, negligent, fraudulent or criminal act of Supplier or of any director, officer, employee, agent or third party subcontractor of Supplier within the scope of this Agreement.

B. **Notification.** CBRE shall promptly notify Supplier in writing of any claims subject to indemnification. In the event that any legal actions are taken, copies of all papers in connection with such action shall be promptly forwarded to Supplier. Supplier shall not, if CBRE or Owner is subject to an indemnified claim, make any settlement without the written consent of CBRE and/or Owner, as the case may be, unless such settlement includes the giving by the claimant to CBRE and/or Owner, as the case may be, a full release from liability in respect of such claim. CBRE and/or Owner, as the case may be, may employ counsel, at its own expense, to participate in and assist with respect to any such claim.

11. Force Majeure:

A Party hereunder shall be excused from performing hereunder for any period in which performance is prevented, in whole or in part, by an act of God, war, civil disturbance, court order, or labor dispute. In the event of an occurrence of any delay brought about by a cause stated herein in this paragraph, the date or dates for performance of this Agreement by the affected Party shall be extended for a period equal to the time lost by reason of the delay. If a delay in delivery continues or will continue for fifteen (15) days or more due to a Force Majeure affecting Supplier, then CBRE shall have the right and option to cancel any such Order affected by the delay.

12. Delivery:

Time is of the essence. No partial delivery or delivery of added quantities shall be made unless CBRE has given prior written consent. All prices for Items shown in this Agreement shall be deemed to include any taxes, handling, crating/packing, shipping or other delivery related expenses unless otherwise set forth in this Purchase Order.

13. Termination for Convenience:

CBRE may terminate this Agreement for its convenience in whole or in part, at any time with or without cause, by written or electronic notice, without liability, fee or penalty. In addition, if Supplier defaults in the performance of or breaches any of its covenants, agreements or obligations under this Agreement, CBRE may in its discretion immediately terminate this Agreement. Further, in the event a petition is filed by or against Supplier under the United States Bankruptcy Code or any similar state or federal law, CBRE may terminate this Agreement immediately thereupon. Upon any termination, Supplier shall be paid only for Items properly rendered prior to the effective date of the termination as determined by CBRE. CBRE, however, may withhold any payments to Supplier upon its breach or default for the purpose of set-off until such time as the exact amount of damages due to CBRE from Supplier is determined. Nothing set forth in this Section shall limit any rights or remedies of CBRE against Supplier or to require an election of remedies in such event.

14. Change Orders:

By written or electronic notice, CBRE may suspend performance under this Agreement, change the quantities of Items, extend or shorten delivery requirements, or make other changes within the general scope of the Agreement, including without limitation (a) applicable specifications, drawings, and other documents; (b) method of shipping or packing and (c) place or date of delivery, inspection or acceptance. If such a change causes an increase or decrease in the cost or time required for Supplier's performance, an equitable adjustment shall be negotiated in the price or other terms of this Agreement. Supplier shall continue with performance of this Agreement in accordance with the notice of change or amendment. A change by CBRE pursuant to this section shall not constitute a breach or default by CBRE.

15. Invoices; Payment Terms:

Invoices shall contain Purchase Order number, a description of Items, quantities, unit price, extended totals, applicable taxes and any other information specified by CBRE. Payment of an invoice shall not constitute acceptance of Items and shall be subject to adjustment for errors, shortages, defects, or other causes. CBRE may set off any amount owed by CBRE against any amount owed to Supplier or any of its affiliated companies. Payment in connection with any discount term will be calculated from: (a) scheduled delivery date, (b) actual delivery date, or (c) the date an acceptable invoice is received, whichever is latest; payment under a discount term is deemed made on the date of mailing of CBRE's check. If payment is made electronically, payment shall be deemed made when the Supplier's depository institution receives or has control of the payment.

16. Significant Changes by Supplier:

Supplier must notify CBRE within 15 days of a significant facility change or organizational change taking place such as company name, location, or change in senior management.

17. Miscellaneous:

- A. **Waiver:** If CBRE fails to insist on performance of any term or condition or fails to exercise any right of privilege here under, such failure shall not constitute a waiver of such term, condition, right or privilege.
- B. **Survival of Obligations:** The obligations of the following sections shall survive the termination or expiration of this Agreement. 2,3,5,6,7,8,9,10,13,15.
- C. **Compliance with Laws:** Supplier represents warrants and covenants that Supplier possesses and shall maintain at its own expense all permits, licenses, approvals, registrations, consents and certificates and pay all fees required by law with respect to any performance of this Agreement. Supplier shall, in connection with performance of this Agreement, comply with all applicable federal, state, and local laws, ordinances, rules, regulations, building codes, court orders, and governmental or regulatory agency orders (collectively, "Laws"), including, without limitation, Laws relating to employment and non-discrimination, U.S. and applicable foreign export Laws; Laws pertaining to health, safety, the environment and hazardous materials. Supplier shall promptly take all necessary actions required to remedy a violation of any such Law, ordinance, rule, regulation or order, which violation arises out of or is a result of the action or inaction of Supplier or its agents or subcontractors, and which remedy shall be at Supplier's sole cost and expense. Supplier shall at all times exercise reasonable care to prevent damage or injury to persons and property and shall not engage in any conduct which might interfere with the operation of Owner's business and/or, in particular, the continuity of the services provided by CBRE to Owner or the Goods provided by Supplier hereunder.
- D. **Dispute Resolution; Jury Trial Waiver; Governing Law:** Any controversy, claim, counterclaim or dispute arising out of or relating to the interpretation or application of any term or provision of this Agreement including any Purchase Order or otherwise relating to the provision of Items that the parties are unable to settle through consultation and negotiation shall be subjected by either party to binding arbitration by JAMS (Judicial Arbitration Mediation Services) in accordance with JAMS procedures, and all expedited procedures prescribed by such association's rules shall apply. The arbitration shall be conducted by a single arbitrator mutually agreeable to both parties unless a different method of appointment is agreed to by the parties. If the parties cannot agree to a method of appointment, appointment of the arbitrator shall be determined by JAMS in accordance with JAMS procedures. The parties designate Dallas, Texas as the hearing locale. The party prevailing in the arbitration shall have all of its reasonable costs, fees and expenses (including, without limitation, attorneys' fees) incurred in connection with the arbitration, as well as all costs, fees, and expenses of the arbitrators, reimbursed by the non-prevailing party. Whether a party is a "prevailing party" shall be determined by the arbitrator. The award rendered by the arbitrator shall be final, conclusive and binding, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. A party shall be entitled to a court order staying any legal proceeding brought by the other party to enforce any rights or remedies such party may have under federal or state law pending the final completion of arbitration. Supplier agrees that in the event of any dispute between the parties, it will continue to provide Goods without interruption unless CBRE directs otherwise in writing. Notwithstanding the foregoing, (i) nothing contained herein shall be deemed to prevent a party from obtaining judicial relief to prevent irreparable harm, and (ii) the parties may cancel or terminate this Agreement as otherwise provided herein without being required to follow the procedures set forth in this Section. CBRE AND SUPPLIER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT. This Agreement shall be construed in accordance with the laws of the State of California, without regard to choice of law principles.

18. Insurance:

Supplier at its own expense, shall have or procure and maintain in full force and effect during the term of this Agreement, general liability, automobile and workers' compensation policies and insurance of the type and in amounts, considering level of service, satisfactory to CBRE. All insurance policies required by this Agreement shall be issued only by reputable companies which are authorized to transact business in the states where the work hereunder is located and which are satisfactory companies to issue such policies