



GENERAL TERMS AND CONDITIONS OF SERVICES AND MERCHANDISE

1.DEFINITIONS: When capitalized in the Purchase Agreement, the following words or phrases shall have the following meanings:

"*Buyer*" shall mean Rutgers, The State University.

"*Buyer's Site*" shall mean the location where the Work shall be performed.

"*Merchandise*" shall mean the materials, articles or services ordered in and delivered pursuant to the Purchase Order(s).

"*Price*" shall mean the price or prices stated in the Purchase Agreement.

"*Purchase Agreement*" shall mean, and consist, collectively, of Buyer's Purchase Order(s) and General Terms and Conditions of Purchase of Service and Merchandise, together with any of the following documents, as applicable, General Terms and Conditions of Bid (Proposal and Quotation), Supplemental Terms and Conditions, Additional Terms and Conditions for Subcontractors Related to United States Government Contracts, Specifications, Drawings, Change Order Notice(s), Invitation to Bid, Construction General Conditions and such other documentation as shall be specified in the Purchase Order(s) and all amendments thereto and all other documents or exhibits attached thereto.

"*Services*" shall mean design, engineering, installation, testing, evaluation, training, maintenance, repair, management, consulting and any other services necessary to fulfill Vendor's obligations under the Purchase Agreement.

"*Specifications*" shall mean the specifications, qualities, nature, type, properties, amounts, assortments and other descriptions of and requirements for the Merchandise as stated in the Purchase Order(s) and in the request for proposal or quotation (if any) pursuant to which the Purchase Order(s) are issued.

"*Subcontractor*" shall mean vendors, suppliers and subcontractors of any tier and any other persons or entities contracting directly or indirectly with Vendor for the performance of the Work under the Purchase Agreement.

"*Vendor*" shall mean any seller furnishing Work to Buyer or any bidder providing a bid in response to a request for proposal or quotation by Buyer.

"*Work*" shall mean Services and Work Product and Merchandise (if any).

"*Work Product*" shall mean studies, reports, evaluations, designs, drawings, procedures, specifications, plans and all other documentation and deliverables which are produced or acquired by Vendor for or at the direction of Buyer.

2.ACCEPTANCE: ACCEPTANCE OF THE PURCHASE AGREEMENT IS EXPRESSLY SUBJECT TO THE TERMS AND CONDITIONS HEREOF. Vendor's acceptance is expressly made conditional on Vendor's assent to the terms and conditions hereof, notwithstanding any additional or different terms or conditions in Vendor's offer or other communication. Vendor shall be deemed to assent to the Purchase Agreement if: (1) Vendor signs and returns to Buyer the attached acknowledgment copy of the Purchase Order, if any; (2) Vendor sends an acknowledgment or confirmation of the Purchase Agreement that agrees with the Purchase Order as to identification of Work, quantity, price and delivery schedule; (3) Vendor commences work on the Purchase Order; (4) Vendor ships all or part of the Work ordered in the Purchase Order; or (5) Vendor gives any other expression of acceptance of the terms and conditions hereof. Buyer reserves the right to revoke the Purchase Agreement at any time before acceptance by Vendor.

3.DELIVERY AND TITLE: Delivery on the Purchase Agreement must be made in the quantities specified by Buyer. Time is of the essence on this contract. Unless otherwise agreed by Buyer, Delivery of all Work Product and Merchandise (if any) shall be made F.O.B. Buyer's site during Buyer's normal receiving hours. Title to and risk of loss of Work Product and Merchandise (if any) shall remain with Vendor until receipt by Buyer, subject to Buyer's right of inspection and rejection in the event of nonconformance.

4.PAYMENT: Buyer shall pay undisputed invoices within thirty (30) days of the latter of receipt of delivery or invoice. If any portion of the Merchandise does not conform to the requirements of the Purchase Agreement, a corresponding portion of the price may be withheld by Buyer until the nonconformity is corrected.

5.EXTRA CHARGES: No additional charges of any kind, including charges for boxing, packing, transportation or other extras, will be allowed unless specifically agreed to in writing by Buyer.

6.ROUTING: All Merchandise, unless shipped F.O.B. destination as indicated on the face of the Purchase Order, must be forwarded by the route taking lowest reasonable transportation rate or in accordance with any special shipping instructions. Otherwise, the difference in freight rate and extra cost of transportation may be charged to Vendor.

7.WARRANTIES: Vendor represents, warrants and guarantees that any Work provided under the Purchase Agreement shall be: (1) provided in accordance with the Specifications and the requirements of the Purchase Agreement; (2) provided in a skillful, workmanlike and professional manner and consistent with generally accepted industry practices and procedures in Vendor's particular area of expertise; (3) merchantable and suitable for the purposes intended by Buyer; (4) constructed from new materials, free from defects in material, workmanship and design, and of proper size and quality; and (5) not manufactured and not priced or sold in violation of any federal, state or local law, including without limitation those relating to health and safety. These warranties shall survive acceptance of and payment for the Work and shall be in addition to any other warranties, express or implied, available to Buyer. The warranty period shall be extended by the amount of time during which the Work is not operable due to a nonconformity.

8.INDEMNIFICATION: Vendor shall defend, indemnify and hold harmless Buyer and its agents, servants, employees, successors, assigns, customers and users, from and against any suit, action, proceeding, judgment, loss, damage, other liability, cost and expense (including reasonable attorneys' fees and expenses and the costs of litigation and investigation) arising from, relating to, or alleging: (1) any injuries (including death) to any person or damage to any property, or any other consequential or incidental damages resulting therefrom, caused or contributed to by any act, fault or negligence of Vendor or anyone acting on its behalf or by any fault or defect in any of the Work (including by reason of strict liability in tort); (2) Vendor's use and possession of Buyer's property; and (3) any infringement, misappropriation of the rights of others, or other violation of the patent, trade secret, trademark, trade name or other intellectual property right of others associated with the Work or any parts thereof furnished by Vendor to Buyer, or if their use by Buyer is enjoined, in which event Vendor shall at Buyer's option and Vendor's expense: (i) procure for Buyer the right to continue using the Work or any parts thereof, (ii) replace the same with substantially equivalent Work or any parts thereof that do not infringe or misappropriate the rights of others; (iii) modify the same so they no longer infringe or misappropriate the rights of others; or (iv) refund the price and the transportation and installation costs to Buyer. Vendor shall obtain from all Subcontractors similar indemnity protection for Buyer. However, such Subcontractor indemnification shall not relieve Vendor of any of Vendor's indemnification obligations hereunder.

9.LIENS: To the fullest extent permitted by law, Vendor is prohibited from filing, and shall take all actions necessary to prevent any Subcontractors from filing, any liens against Buyer or its property, including Buyer's Site. In addition, Vendor shall defend, indemnify and hold harmless Buyer and any of its property, including Buyer's Site, from all demands, liabilities and liens which may arise in favor of Vendor or any Subcontractors, and from all damages, costs and expenses (including reasonable attorneys' fees and expenses and the actual costs of litigation) resulting from such demands, liabilities or liens. If requested by Buyer, Vendor shall execute Buyer's Stipulation Against Liens Agreement and shall file it in the appropriate governmental offices.

10.LIMITATION ON DAMAGES: Buyer's liability and Vendor's recovery for any injuries, losses, damages, expenses, costs or other liabilities arising out of the cancellation of any part of the Purchase Agreement by Buyer, any breach of the Purchase Agreement by Buyer, or Buyer's other acts or omissions (including its negligence) shall be limited to the lesser of: (1) the costs incurred by Vendor prior to such cancellation, breach or other acts of omissions; or (2) the purchase price for the canceled or affected Purchase Order. In no event shall Buyer be liable to Vendor for consequential or incidental damages.

11.CHANGES: Buyer may at any time by a written Change Order Notice make changes within the general scope of the Purchase Agreement. If any change results in a material increase or decrease in the cost of the Work or otherwise materially affects the Purchase Agreement, the Change Order notice shall include an equitable adjustment in the Price, the schedule and/or any other affected provision. Any objection by Vendor to the proposed equitable adjustment must be asserted within seven (7) business days after receipt of the Change Order Notice. Notwithstanding such objection, if directed by Buyer, Vendor shall proceed with the change.

12.SUSPENSION OR INTERRUPTION OF WORK: Buyer may direct Vendor, in writing, to suspend or interrupt all or any part of the Work for such period of time as Buyer

may determine to be appropriate. Vendor shall mitigate the costs of such suspension or interruption. Buyer agrees to reimburse Vendor for those expenses necessarily incurred directly as a result of such suspension or interruption, subject to Buyer's right to audit Vendor's books and records, except where such suspension or interruption results from Vendor's material noncompliance with the Purchase Agreement.

13.TERMINATION: Buyer may terminate all or part of the Purchase Agreement if Vendor abandons the Work, is unable to obtain a bond, if required, assigns the Purchase Agreement or subcontracts the Work or any of its parts without Buyer's written consent or otherwise fails to comply with the Purchase Agreement; provided, however, that prior to such termination Buyer must have notified Vendor in writing of its intent to terminate the Purchase Agreement and the reasons therefor. If Buyer terminates for cause, Buyer may complete or contract with a third party to complete all or part of the Work, and Vendor shall be liable to Buyer for the excess costs to complete all or such part of the Work and any other damages resulting from Vendor's noncompliance.

Buyer may also terminate upon prior written notice all or part of the Purchase Agreement for convenience and without cause. Upon receipt of notice, Vendor shall bring the Work to a prompt conclusion. Buyer shall pay Vendor a proportionate amount of the Price due to Vendor for Work completed up to the effective date of termination plus costs necessarily incurred directly as a result of the termination, subject to Buyer's right to audit Vendor's books and records.

In all cases Buyer may require Vendor to transfer title and deliver to Buyer any contracts, rights and Work produced or acquired by Vendor for the performance of the Purchase Agreement.

14.CONFLICTS; ERRORS; OMISSIONS: In the event Vendor or Buyer becomes aware of any conflict, error or omission in the documents comprising the Purchase Agreement, such party shall bring the discrepancy to the attention of the other party. Such discrepancy shall be resolved by Buyer in its sole discretion.

15.INSPECTIONS AND TESTS: Buyer may inspect the progress of the Services and Work Product provided under the Purchase Agreement including Services and Work Product performed at Vendor's facilities. If the Purchase Agreement, laws, ordinances, rules, regulations or orders of any public authority require any portion of the Services and Work Product to be inspected, tested or approved, Vendor shall give Buyer reasonable advance notice of completion of such portion of the Services and Work Product and need for inspection, testing and/or approval, and shall not continue with such portion of the Services or modify the such portion of the Work Product until such inspection, test or approval is completed. Vendor shall notify Buyer when, in its opinion, the Services and Work Product is completed. For a reasonable time after delivery and before acceptance, Buyer shall have the right to inspect and test the Work. Buyer shall notify Vendor if the Work or parts thereof do not conform to the Purchase Agreement. Vendor shall promptly correct, repair or replace all nonconforming Work at its sole expense. Merchandise that is defective or not in accordance with the Specifications will be held for thirty (30) days pending Vendor's further instructions at Vendor's risk and expense, and if Vendor so directs will be returned at Vendor's expense. After the expiration of thirty (30) days, Buyer shall have the right to sell the Merchandise at public or private sale, continue to store it at Vendor's expense, or treat it in any manner consistent with law. Payment for Merchandise by Buyer prior to its inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Buyer may have against Vendor. Acceptance and payment by Buyer shall not relieve Vendor of any of Vendor's duties and obligations.

16.JOB COST ACCOUNTS AND INFORMATION, AUDITS: Vendor shall maintain detailed separate cost data for each Purchase Order in accordance with generally accepted accounting principles. Vendor's records pertaining to the costs of the Work (other than fixed Prices agreed to prior to performance of the Work) and Vendor's tax records shall be open at all reasonable times for inspection or audit by Buyer or its representative(s). Buyer or its representative(s) shall at reasonable times have access to the premises, materials, instructions, working papers, plans, drawings, specifications, memoranda and other information of Vendor pertaining to the Work. All Vendor's purchase orders or contracts with Subcontractors shall provide that Buyer or its representative(s) shall have the right to audit Subcontractors' charges to Vendor. Buyer's rights under

this Section shall terminate five (5) years after expiration of the warranty period.

17.INSURANCE: If Vendor will be performing Services at or on Buyer's property, or as otherwise required by Buyer, Vendor will carry insurance in accordance with Buyer's minimum Insurance Requirements to indemnify Buyer against any claim for loss, damages or injury to property or persons arising out of the performance by Vendor or its employees, agents or Subcontractors under the Purchase Agreement and the use, misuse or failure of any equipment or Work used by Vendor or its employees or agents, and shall provide certificates of such insurance to Buyer.

18.TAXES: Buyer is not subject to any sales or excise taxes. Taxes are not to be included in any quotations, invoices or bills.

19.CONFIDENTIAL/PROPRIETARY INFORMATION: Except as otherwise required by applicable laws or regulations, the parties agree to, and to cause their respective affiliates to, keep confidential all non-public information relating to the parties, the Purchase Agreement, and the transaction contemplated hereby, and to not use any such information for any purpose unrelated to the consummation of the transactions contemplated by the Purchase Agreement, except information which: (1) becomes known to the other from a source which is not obligated to keep such information confidential; or (2) becomes generally available to the public; or (3) is required to be disclosed by law or pursuant to court order or lawful subpoena; provided however, that these restrictions shall not apply to the disclosure of such information to the parties' respective attorneys, accountants and advisors.

20.INTELLECTUAL PROPERTY RIGHTS: Vendor represents and warrants that it is the exclusive owner of all Services, Work and Work Product and has obtained all assignments from its employees, agents, subcontractors and other representatives sufficient to convey absolute title to Buyer in such Services, Work and Work Product. Vendor further represents and warrants that the Work and Work Product shall not infringe or violate any letters patent, copyrights, trademarks or other third party proprietary right, and does not unlawfully disclose or make use of any trade secrets. Vendor hereby assigns to Buyer, and Buyer shall have exclusive use of and own, all right, title and interest in and to all Services, Work and Work Product. All Services and Work Product shall be considered "works made for hire." Should Vendor perform development work in producing the Merchandise covered by the Purchase Order, Buyer shall receive a nonexclusive, royalty-free license to use and sell the Merchandise.

21.PUBLICITY: Vendor shall not use Buyer's name nor issue any publicity releases, including but not limited to, news releases and advertising, relating to the Purchase Agreement without the prior written consent of Buyer.

22.FORCE MAJEURE: Neither party shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to causes beyond its reasonable control, including but not limited to, acts of God, public enemy or government, riots, fires, natural catastrophe or epidemics. In the event of such failure or delay, the date of delivery or performance shall be extended for a period not to exceed the time lost by reason of the failure or delay; provided that Buyer may terminate the Purchase Agreement if the period of failure or delay exceeds fifteen (15) days. Buyer shall have no obligation to make any payments to Vendor during the period of failure or delay. Each party shall notify the other promptly of any failure or delay in, and the effect on, its performance.

23.ASSIGNMENT: Vendor shall not assign the Purchase Agreement, in whole or in part, nor contract with any Subcontractor for the performance of the same or any of its parts, without first obtaining Buyer's written consent. In the event Buyer consents to such assignment to a Subcontractor, nothing contained in the Purchase Agreement or such consent shall be construed as creating any contractual relationship between any Subcontractor and Buyer. Vendor shall be as fully responsible to Buyer for the acts and omissions of Subcontractors, and of persons employed by it as it is for the acts and omissions of persons directly employed by it. Vendor shall cause appropriate provisions to be inserted in all subcontracts to bind Subcontractors to Vendor by the terms of the contract, including the Specifications, insofar as applicable to the services of Subcontractors, and to give Vendor the same power of terminating any subcontract that Buyer may exercise over Vendor under any provisions of the Purchase Agreement. Buyer's consent shall not be construed as discharging or releasing Vendor in any way from the performance of the work or the fulfillment of any obligation under the Purchase Agreement.

24.WORK BY OWNER OR BY SEPARATE CONTRACTOR: Buyer may be performing work related to the Work with its own forces or through separate purchase agreements with other contractors. In such

instances, Buyer reserves the right to coordinate the Work with the work of its forces and the other contractors.

25.VERIFICATION OF CONDITIONS AT BUYER'S SITE: Vendor shall perform a thorough inspection of Buyer's Site for the purpose of verifying any condition that may affect the Work, such as possible errors in work previously performed by others and difficulties that may be encountered in the performance of the Work for any reason. When the proper performance of any part of the Work depends upon other work, whether performed by Vendor or others, Vendor shall verify all necessary dimensions, measurements and equipment that may affect the Work. No adjustment to the Price shall be made for Vendor's failure to comply with this Section.

26.PROTECTION OF PROPERTY AND PERSONS: All equipment or material (including without limitation informational material) furnished by Buyer and all jigs, fixtures, dies, tools or patterns charged by Vendor to Buyer shall, unless otherwise agreed in writing, be the property of Buyer and shall be returned to Buyer. Vendor will not use such equipment, material, jigs, fixtures, dies, tools and patterns in any of its business except its business with Buyer under this or other purchase orders. Vendor shall take all necessary precautions during the progress of the Work to protect all persons and the property of Buyer and others from injury, loss or damage including, without limiting Vendor's duties, any precautions directed by Buyer. Vendor shall assume full responsibility for all tools, equipment and materials to be used in connection with the Work.

27.ENVIRONMENTAL COMPLIANCE:
A. Prior to commencement of any Work, Vendor shall provide to Buyer a list of all hazardous or potentially hazardous substances and associated Material Safety Data Sheets that may be used or generated in connection with the Work.

B. Vendor and its Subcontractors shall comply with all applicable federal, state and local laws, ordinances, codes and regulations (collectively, Laws) relating to safety and the protection of the environment including, but not limited to, handling, protection, transportation and disposal of all hazardous materials, toxic substances, hazardous substances and residual wastes. The Work shall be in compliance with all Laws on the date of acceptance (which date shall be after the Work is completed and inspected).

C. If Vendor provides Services or Work Product to be used by another vendor in the performance of work for Buyer, the Services or Work Product shall specify that such vendor shall comply with the requirements of all present and future applicable changes in the Laws.

28.PREMISES: Vendor shall confine its facilities, materials, tools and equipment on Buyer's Site in areas specified by Buyer for that purpose. Vendor shall during the progress of work and on a daily basis upon completion of the Work, clean up and remove from Buyer's Site and from the adjoining premises, driveways and streets all waste materials, rubbish, tools and machinery, and leave Buyer's Site and adjoining premises, driveways and streets free and clear from all obstructions. Furthermore, at the completion of Work, Vendor shall return Buyer's site to its original condition or as otherwise required in the scope of work.

29.BUYER'S APPROVAL OF PLANS, SPECIFICATIONS AND SCHEDULES: Vendor shall develop and submit for review and approval by Buyer any procedures, checklists, drawings, specifications and other documentation requested by Buyer to verify that the Work conforms to the Purchase Agreement. Vendor shall not proceed with any part of the Work which requires prior approval by Buyer until such approval has been obtained.

30.KEY PERSONNEL: The Work shall be performed by Vendor's key personnel if named in the Purchase Agreement, and no other person shall be substituted without the prior written approval of Buyer. Vendor shall replace any of its key personnel to whom Buyer objects, and any replacement shall be subject to the prior written approval of Buyer.

31.BUYER'S PERFORMANCE OF VENDOR'S OBLIGATIONS: If Vendor fails to comply with any of its obligations under the Sections relating to Liens, Insurance, Taxes, Verification of Conditions at Buyer's Site, Protection of Property and Persons, Premises, Buyer's Approval of Plans, Specifications and Schedules, Buyer may, at its option, without affecting Vendor's obligations under such Sections or Buyer's rights under the Termination Section, perform or contract with a third party to perform all or any of such obligations, and Vendor shall be liable to Buyer for the costs of performing such obligations and any other damages resulting from Vendor's failure to comply.

32.MBE/WBE: It is the policy of Buyer to stimulate the growth of Certified Minority and Women Business Enterprises (MBEs and WBEs) by encouraging their participation in Buyer's procurement activities and by

affording them an equal opportunity to compete for Buyer's procurements. Vendor agrees to carry out this policy to the fullest extent consistent with the requirements of the Purchase Agreement: (1) through the award of subcontracts to MBEs and WBEs; or (2) if Vendor is a MBE or WBE, through the use of its own forces. Vendor shall include this policy as a provision in all subcontracts.

33.NOTICES: Any notice required under the Purchase Agreement shall be in writing and sent to Vendor and Buyer at their respective addresses identified on the Purchase Order.

34.INDEPENDENT CONTRACTOR: Vendor shall operate as an independent contractor in the performance of the Purchase Agreement and not as an agent or employee of Buyer. Vendor shall ensure that neither it nor its agents or employees shall act or hold themselves out as agents or employees of Buyer. Vendor shall have complete control of its agents and employees engaged in the performance of the Work.

35.PRIORITY OF DOCUMENTS: In the event of conflict among the various documents of the Purchase Agreement, the conflict shall be resolved according to the priority given to the documents in the Purchase Order(s). If no priority is indicated in the Purchase Order(s), the terms and conditions hereof shall take precedence, except when Construction General Conditions are applicable, in which case the Construction General Conditions shall take precedence.

36.SEVERABILITY: If any provision(s) of the Purchase Agreement is found by a New Jersey court of competent jurisdiction to be illegal or otherwise unenforceable, such provision(s) shall be deemed not to be a part of the Purchase Agreement and the remaining provisions shall remain in full force and effect.

37.SURVIVAL: The obligations and rights of the parties pursuant to the Assignment, Liens, Warranties, Confidential/Proprietary Information, Indemnification, Intellectual Property Rights and Job Cost Accounts and Information, Audits Sections shall survive the expiration or early termination of the Purchase Agreement.

38.LAWS; CODES; RULES; REGULATIONS: Vendor and its Subcontractors at their own expense shall obtain all necessary licenses and permits and shall otherwise comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules and regulations relating to performance of the work, including but not limited to safety, environment, labor standards and workers' compensation. Vendor and its Subcontractors shall also comply with the following clauses incorporated by reference into the Purchase Agreement: Equal Opportunity Clause, 41 CFR 1-60-1.4; Affirmative Action for Disabled Veterans and Veterans of Vietnam Era, 41 CFR 60-250.5; Affirmative Action for Handicapped Workers, 41 CFR 60-741.5(a); and Non-Segregated Facilities Provision, 41 CFR 60.1.8.

Vendor and its Subcontractors shall also comply with Buyer's policies, rules and procedures.

39.NON-DISCRIMINATION IN EMPLOYMENT: Buyer, Vendor and Vendor's Subcontractors (if any) agree to comply fully with the terms, provisions and obligations of the following clauses, as amended and supplemented from time to time, which are incorporated by reference into the Purchase Agreement: (a) Subsection 3.4(a) of the Regulations promulgated by the Treasurer of the State of New Jersey pursuant to N.J.S.A. 10:5-1 *et seq.*, P.L. 1975, c. 127, provided that said subsection shall be applied subject to the terms of Subsection 3.4(d) of said regulations; (b) Section 5.3 of the Regulations promulgated by the Treasurer of the State of New Jersey pursuant to N.J.S.A. 10:5-1 *et seq.*, P.L. 1975, c. 127; (c) the provision of N.J.S.A. 10:2-1 through 10:2-4, P.L. 1933, c. 171, dealing with discrimination in employment on public contracts, and the rules and regulations promulgated pursuant thereto.

Vendor hereby affirms, as of the date of its acceptance of the Purchase Agreement, the truth of the "affirmative action" affidavit, if any, most recently submitted by it to Buyer.

40.PREVAILING WAGE: (a) New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 through 56.46, P.L. 1963, c. 150, and any amendments thereto, is hereby incorporated into this Purchase Agreement. Vendor guarantees that neither it nor any Subcontractor which it might employ to render performance under this Purchase Agreement is listed or is on record in the Office of Commissioner of the Department of Labor and Industry of the State of New Jersey as one who has failed to pay prevailing wages in accordance with the provisions of the said Act.

(b) Vendor hereby affirms, as of the date of its acceptance of this Purchase Agreement, the truth of the "prevailing wage" affidavit, if any, most recently submitted by it to Buyer.

41.NO CONTINGENT FEE WARRANTY: Vendor hereby warrants that no person or selling agency has been employed or retained to solicit or secure this Purchase Order

upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by Vendor for the purpose of securing business. In the event of a breach of this warranty, Buyer shall have the right to annul this contract without liability or in its discretion to deduct from the moneys due Vendor under this Purchase Order the full amount of such commission, percentage, brokerage or contingent fee.

42.GOVERNING LAW; JURISDICTION: The Purchase Agreement shall be governed by, construed in accordance with and enforced under the internal laws of the State of New Jersey, without reference to the choice of law principles thereof. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New Jersey and the United States District Court for the District of New Jersey for the purpose of any suit, action, proceeding or judgment relating to or arising out of the Purchase Agreement and the transactions contemplated thereby.

43. NON-WAIVER: The failure of Buyer in any one or more instances to insist upon the performance of any of the terms or conditions of the Purchase Agreement or to exercise any right hereunder shall not be construed as a waiver or relinquishment of the future performance of any such terms or conditions or the future exercise of any such right.

44.ENTIRE AGREEMENT: The Purchase Agreement contains the entire agreement between the parties with

respect to this subject matter and supersedes any and all prior oral or written agreements.

45.BRAND NAMES AND/OR DESCRIPTION: Brand names and/or description used in the Purchase Order are to acquaint Vendors with the type of commodity desired and will be used as a standard by which alternative or competitive materials offered will be judged. If acceptable, competitive items must be equal to the standard described and be of the same reputation for quality and workmanship. Variations between the materials described and materials offered are to be fully explained by Vendor in an accompanying letter. A full explanation is to be given of any improved features or innovations recently developed, now on the market, but not previously available. All commodities must be in current production. Discontinued items will not be considered. Where specifications are attached describing the item, Vendors must explain in detail wherein the material offered differs from the specifications. In the absence of any changes by Vendor, it will be presumed and required that material, as described in the Purchase Order, be delivered. Buyer reserves the right to reject any and all alternative or competitive materials offered by Vendor.

46.SALE OF VENDOR'S BUSINESS: Vendor may not assign either the Purchase Agreement or any of its rights hereunder without first obtaining the written consent of the Buyer, and any attempted assignment without such written consent shall be void and confer no rights upon any third party. Notwithstanding the foregoing, Vendor may assign this agreement to another party as part of the sale or other transfer of its business, voluntarily, by force of law or by

any means, provided that such other party shall agree to be bound by all of Vendor's obligations to Buyer under this Purchase Agreement, and subject to Buyer's right, in its sole and absolute discretion, to require such other party to provide to Buyer a performance bond in the amount of the open balance of the Purchase Order.