

TERMS AND CONDITIONS OF PURCHASE

1. **ACCEPTANCE:** The terms and conditions herein are the exclusive agreement between Creare and Seller for the purchase of articles or services ordered herein, unless superceded by a letter or subcontract signed by an authorized signatory of Creare. Any of the following shall constitute Seller's unqualified acceptance of this purchase order: (a) acknowledgment of this order; (b) furnishing of any part of the supplies/services under this order; (c) acceptance of any payment for the supplies/services or (d) commencement of performance under this order. Additional or different terms proposed by Seller shall not be applicable unless accepted in writing by an authorized representative of Creare.

2. **PRICE, SPECIFICATIONS AND INVOICING:** The prices quoted are for completed work. No extras or changes from Creare's specifications will be allowed except as they may be specifically referred to in this order or as they may be covered by subsequent agreements in writing. All invoices are to be exactly in accordance with this order as to discounts, quantity, price, etc. Creare shall not be liable for any packing, crating, or shipping charges unless this order specifically so provides. Seller agrees and represents that prices charged for articles or services provided hereunder are not in excess of those charged other customers of Seller for orders of similar quantities of substantially similar goods or services on comparable terms.

3. **RISK OF LOSS:** Risk of loss or damage shall remain with Seller until the goods reach Creare's place of business.

4. **DELAY:** Creare reserves the right to cancel all or any part of this order in case of delay. If shipment is delayed in transit beyond the discount period, Creare does not waive its right to a cash discount.

5. **WARRANTY:** (a) Seller warrants that all supplies and services delivered hereunder shall be free from defects in materials and workmanship and shall be in conformance with the quantity and description set forth herein. Seller further warrants all supplies and services delivered hereunder shall be of merchantable quality and shall be fit and suitable for the purposes expressed herein. Such warranty shall survive delivery, inspection, acceptance or payment by Creare. (b) If any supplies or services delivered hereunder do not meet the warranties specified herein, Creare may, at its option, (i) require Seller to correct at no cost to Creare any defective or nonconforming supplies or services by repair or replacement; or (ii) return such defective or nonconforming supplies or services to Seller at Seller's expense and recover from Seller the order price; or (iii) correct the defective or nonconforming supplies or services itself and charge Seller with the cost of such correction. The foregoing remedies are in addition to all other remedies at law or in equity. All warranties shall run to Creare and its customers.

6. **INSPECTION:** All supplies and services purchased hereunder shall be subject to inspection and test by Creare. Creare may reject, require replacement or correction, or accept with an adjustment in price any supplies or services which do not conform to the requirements of this order.

7. **CHANGES:** Creare may at any time, by a written change order, make changes in any one or more of the following: drawings, designs, specifications, or quantity. If any such change causes an increase or decrease in the cost of or time required for performance of this order, whether or not changed by the order, an equitable adjustment shall be made in the price or delivery schedule, or both, and this order shall be modified accordingly. No claim by Seller for adjustment hereunder shall be allowed unless received by Creare within thirty (30) days from the date of Seller's receipt of notice of any such change.

8. **TERMINATION:** (a) Creare may terminate this order for convenience or default in whole or in part at any time by written notice to Seller. The rights and obligations of Creare and Seller shall be governed by Federal Acquisition Regulation (FAR) Part 49.5 as in effect on the date of this order. (b) Time is of the essence. Creare may terminate this order for default if Seller: (i) fails to make delivery of the supplies or services within the time specified hereunder; or (ii) fails to replace or correct nonconforming supplies or services in accordance with the Warranty and Inspection clauses hereunder, or (iii) becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Seller under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors. Creare shall also have such other rights and remedies available at law or in equity upon Seller's default. (c) Seller agrees that upon notice of termination it shall stop all work on the balance of this order; place no further orders hereunder; terminate work under orders outstanding; assign to Creare all of Seller's interests under terminated subcontracts and orders; upon Creare's approval, settle all claims; transfer title and make delivery to Creare all articles, materials, work in process, tools,

dies, jigs, fixtures or other things held or acquired by Seller under the terminated portion of this order.

9. **ASSIGNMENT AND SUBCONTRACTING:** Seller shall not subcontract any work hereunder or assign this order or any moneys due or to become due hereunder without the prior written consent of Creare. Any assignment or attempted assignment contrary to this provision shall be void as to Creare. In any event, assigned accounts shall be subject to setoff or recoupment of claims of Creare against Seller.

10. **PATENTS AND PROPRIETARY DATA:** Seller will indemnify Creare and hold it harmless from any and all claims, suits or other costs and expenses relating to alleged infringement of any patent, trademark or other similar right, by reason of the purchase, use or sale of goods purchased hereunder. All drawings, methods, processes, material, equipment, parts, or assemblies, ("Property") furnished by or paid for by Creare as part of or in connection with this order are the confidential and proprietary Property of Creare and may not be used or disclosed for any purpose except that for which supplied unless written permission is granted by Creare. Such Property shall be held at Seller's risk and kept insured by Seller at Seller's expense. All Property shall be returned to Creare upon completion of this order.

Any information disclosed by Creare to Seller in whatever form, including in writing, orally or visually shall be considered confidential and proprietary information of Creare whether or not marked as such ("Confidential Information"). Such Confidential Information shall not be disclosed, except to further the purpose of this order or with the prior written authorization of Creare. For the avoidance of doubt, Confidential Information shall be protected as long as the information is such that a reasonable person receiving the information would reasonably expect that Creare would consider the information to be Confidential Information, and thus covered under these terms and conditions,

11. **INDEMNIFICATION AND INSURANCE:** Seller will indemnify and hold harmless Creare, its employees and agents from and against all liability, demands, claims, losses, costs, damages, and expenses by reason or on account of property damage, death and personal injury of whatsoever nature arising out of, as a result of, or in connection with the performance of this order which is occasioned by the actions or omissions of Seller or its subcontractors or suppliers of any tier. Seller will maintain and carry liability insurance which includes but is not limited to employer's liability, workmen's compensation, general liability, public liability, property damage liability, product liability, completed operations liability and contractual liability. Seller will, if requested by Creare, furnish certificates of insurance from its carrier on the foregoing coverages. Should Certified Cost or Pricing Data be required under this purchase order, seller shall indemnify and hold harmless Creare from any amount, loss and expense, including interest assessed by the Government under 10 USC 2306a, by which this purchase order is determined by the Government to have been defectively priced because of Seller's or Seller's subcontractor's failure to comply with such provisions. The rights of the parties shall survive completion or termination of this purchase order.

12. **WAIVER:** The failure of Creare to enforce at any time any provision of this order or the failure of Creare to require performance by Seller under the provisions hereof shall in no way be construed to be a waiver of such provisions or any other provision hereunder.

13. **COMPLIANCE WITH LAWS:** Seller shall comply with all applicable federal, state and local laws, executive orders, rules and regulations during performance of this order, including but not limited to: all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C.2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; E-Verify Employment Eligibility System as required by 48 C.F.R. 52.222-24; Occupational Safety and Health Act of 1970 as amended; Toxic Substances Control Act as amended; Fair Labor Standards Act of 1938 as amended; Equal Employment Opportunity Act as amended; Executive Order Nos. 11246, 11375, 12086, 13496, and 13672, as amended and incorporated into 41 CFR Parts 60-1, 60-2, 60-4, 60-20, 60-50, 60-300, and 60-741; Contract Work Hours & Safety Standards Act as amended; Equal Pay Act of 1963 as amended; Age Discrimination in Employment Act as amended; Rehabilitation Act of 1973 as amended; Vietnam Era Veterans Readjustment Assistance Act of 1974 as amended; Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a)); Anti-Kickback Act of 1986 as amended; Drug Free Workplace Act of 1997; Affirmative Action for Workers with Disabilities (29 U.S.C.793); Affirmative Action for Handicapped

TERMS AND CONDITIONS OF PURCHASE

Workers; and Office of Federal Procurement Policy Act as amended. At the request of Creare, Seller shall furnish any and all certifications of compliance applicable to this order. If Creare is subjected to any liability as the result of Seller's or its lower tier suppliers' failure to comply with any of the aforementioned laws, then Seller agrees to indemnify and hold Creare harmless to the full extent of any loss, damage or expense resulting from any such failure.

14. GOVERNING LAW AND CERTIFICATION: The validity, construction and interpretation of all documents relating to this sale, and the rights and duties of the parties thereto shall be governed by the laws of the State of New York (U.S.A.), without regard to conflict of law principles. Seller represents and warrants that its relationship with Creare will not cause or require it to breach any obligation to, agreement, or confidence related to confidential, trade secret and proprietary information with any other person, company or entity.