

## **TERMS AND CONDITIONS**

The following terms and conditions govern the attached purchase order placed by Advance Stores Company, Incorporated and its subsidiaries ("Advance") with a Vendor. This purchase order shall be deemed to have been accepted by Vendor upon receipt by Advance of any writing, including a writing transmitted by telecopier or other means of electronic transmission, indicating acceptance, or by shipment of the products or any portion thereof or by performance by Vendor of the requested services. Acceptance of the terms of this purchase order is expressly limited to the terms and conditions set forth herein and notice of objection and refusal by Advance is hereby given to any different or additional terms provided by Vendor in any response to this purchase order or contained in Vendor's invoice, bill of lading or any other Vendor document. By accepting a purchase order, Vendor agrees to comply with all of the following terms and conditions.

1. Pricing - Unless otherwise provided elsewhere in the purchase order, prices are: (i) stated in U.S. dollars; (ii) not subject to increase; and (iii) Delivered Duty Paid ("DDP", INCOTERMS 2000) at a facility specified by Advance. No extra charges of any kind will be allowed unless specifically agreed to by an authorized representative of Advance in writing. Vendor will separately indicate on its invoices any sales or use taxes imposed on the sale or delivery of products or performance of services. Except as expressly set forth in the purchase order, Contractor shall be responsible for the payment of all expenses incurred while providing products or services to Advance.

2. Payment - Except as otherwise expressly stated elsewhere in the purchase order, the net amount shall be payable within 60 days after the later of (i) delivery and acceptance of goods by Advance, or (ii) the date of successful completion of performance of services by Vendor and acceptance of the services by Advance; or (iii) the date of receipt of Vendor's invoice.

3. Delivery - Delivery dates are firm and TIME IS OF THE ESSENCE WITH RESPECT TO DELIVERY. Vendor will promptly notify Advance in writing if Vendor anticipates difficulty in complying with a required delivery date and will use all commercially reasonable efforts to meet the required delivery date. Except as otherwise stated elsewhere in the purchase order, delivery will occur, and title and risk of loss will transfer, when (i) product passes into Advance's facility and is accepted by Advance or is delivered to the carrier engaged by Advance to further transport the product; and/or (ii) services are successfully completed by Vendor and are accepted by Advance. All software purchased by Advance shall be delivered by the Vendor to Advance electronically. A copy of the source code for any software purchased by Advance shall be placed in escrow for the benefit of Advance in accordance with the terms and provisions of a software escrow agreement with terms and conditions reasonably acceptable to Vendor and Advance.

4. Warranties - Vendor warrants that: (i) Vendor's products are of merchantable quality, (ii) Vendor's products and/or services are fit and safe for consumer use and consumption, (iii) Vendor's products are free from all defects in design, workmanship and materials; (iv) Vendor and Vendor's agents and subcontractors as well as Vendor's products and services will comply with all applicable U.S and foreign federal, state and local laws and regulations; (v) Vendor's products and/or services will comply with all of either the mutually agreed upon specifications or Vendor's specifications for such products or services as well as the samples and descriptions of the products and/or services previously provided by Vendor to Advance; (vi) Vendor's services will be performed in a good and workmanlike manner and in accordance with the highest standards in Vendor's industry; and (vi) Vendor's products and services will be delivered free of any claims by third parties, including but not limited to any claim that the product or services of Vendor infringe a patent, trademark, trade dress, trade secret or other proprietary right of a third party. If any products or services fail to conform to the above warranties, Vendor, at Advance's option and Vendor's expense, will: (a) replace or repair the nonconforming products; or (b) re-perform the nonconforming services; or if either (a) or (b) is commercially unreasonable to perform, (c) refund to Advance the amounts paid by Advance for the nonconforming products or services and reimburse Advance for any costs incurred by Advance related to the nonconforming products or services. Vendor will promptly notify Advance in writing if: (x) a governmental authority advises Vendor that a product recall is necessary or appropriate; or (y) Vendor determines that it is necessary or desirable to stop or limit the sale or distribution of the products. In the event there is a catastrophic manufacturing defect problem or a product recall, Vendor will accept the return of all defective or recalled products from Advance and pay Advance for the returned products plus Advance's freight and handling costs. Vendor will cooperate with Advance in the investigation and resolution of any consumer complaint received by Advance regarding any product and/or service provided by Vendor.

**5. Indemnification -**Vendor agrees to indemnify and hold harmless Advance Stores Company, Incorporated and its parent, subsidiaries, affiliates, officers, directors, employees and shareholders (the "Advance Indemnified Parties") from and against all claims, liability, loss, cost and expense (including injury or damage to person or property, reasonable attorney fees and expert witness fees) ("Claims") incurred or sustained by an Advance Indemnified Party or a third party as a result of: (i) any breach by Vendor of the representations, warranties or other terms and conditions set forth in this purchase order; (ii) any injury sustained by an employee of Vendor or one of its contractors or agents while on an Advance Indemnified Party site; (iii) any act or omission by Vendor or its contractors or agents or any of their employees including, without limitation, in delivery of the product or services; (iv) any Claim by a third party that the products or the services of Vendor infringe a patent, trademark, trade dress, trade secret or other intellectual property right of a third party; (v) any failure of the Vendor to timely deliver its products and/or timely perform its services; (vi) any seizure, detention or destruction of products by or as requested by a governmental authority; and (vi) any property damage and/or personal injury arising from the handling or use of the products. The Advance Indemnified Parties shall have no responsibility for any Claim to be indemnified by Vendor unless such Claim results from the sole negligence of an Advance Indemnified Party. The Advance Indemnified Party shall notify Vendor of the receipt of actual notice of any Claim. Vendor shall immediately assume control of the defense and all related settlement negotiations provided, however, that Vendor shall not agree to any settlement with a non-monetary obligation imposed upon an Advance Indemnified Party without the written consent of the Advance Indemnified Party to such non-monetary obligation. The Advance Indemnified Parties will provide Vendor with the assistance reasonably necessary to perform the above defense; Vendor will promptly reimburse reasonable out-of-pocket expenses incurred by the Advance Indemnified Parties in providing such assistance. The terms and provisions of this Paragraph shall survive the termination or expiration of the purchase order.

6. Offset - Advance shall have the right to offset any amounts owed by Vendor to Advance against any amounts owed by Advance to Vendor.

7. Insurance - Vendor shall provide and maintain primary (and not contributory with any additional insured policy) insurance from U.S. carriers with an A.M. Best rating of "A" or better during the term of the purchase order as follows:

a) Statutory Workers' Compensation coverage for all of its employees, including occupational disease, as required by applicable law, and employer's liability coverage of at least \$1,000,000.

b) Liability Insurance (excluding automobile liability) written on an "occurrence" basis with a combined single limit of at least \$1,000,000 per occurrence and \$1,000,000 in the aggregate for bodily injury and property damage in a form providing coverage not less than a standard commercial general liability policy including hazards of operation coverage, broad form property damage liability coverage, products/completed operations coverage and broad form contractual liability coverage with liability limits equal to at least the limits in this Section (b). The policy shall name Advance as an additional insured party.

c) Automobile Liability including protection for automobiles and trucks used by Vendor either on or away from the Advance locations, with a combined single limit of at least \$1,000,000 per occurrence for bodily injury and property damage. The policy shall include coverage for all hired, owned and non-owned vehicles and name Advance as an additional insured party.

d) "All risk" property coverage on all tools and equipment, including rental equipment used by Vendor, for which Vendor may self-insure, and Vendor hereby waives any right of subrogation against Advance for any loss or damage to same. If Vendor elects to self-insure, Vendor shall protect Advance to the same extent as it would if it had an all risk property coverage policy.

e) Vendor waives its right of subrogation against Advance on behalf of itself and its insurers for any loss or damage covered by the insurance policies. All of the policies shall be endorsed to provide a waiver of subrogation in favor of Advance.

f) If requested by Advance, Vendor shall increase the dollar amount of the coverages set forth above and/or furnish Advance with a certificate of insurance and other satisfactory evidence of the required insurance prior to the commencement of services and delivery of products and also, throughout the term of the purchase order, at least annually and thirty (30) days prior to the expiration date of any insurance coverage. Each policy shall include a provision requiring that at least thirty (30) days' prior written notice be given Advance in the event of cancellation or material change of the coverage in any policy.

g) If the Vendor's insurance program incorporates deductibles or self-insured retention in excess of Twenty Five Thousand Dollars (\$25,000.00) per occurrence, the certificate of insurance shall state the per occurrence, loss or claim (however defined) deductible, retention, aggregate retention and umbrella insurance requirements.

h) If any insurance is written on a "claims made" form (instead of on a per occurrence basis) and Advance expressly agrees in writing to accept such insurance, the Certificate of Insurance shall expressly and specifically identify the insurance written on a "claims made" form and Vendor shall thereafter maintain the "claims made" coverage throughout the purchasing relationship between Advance and Vendor and for a period of three (3) years after the relationship ends.

8. Confidential Information - The parties may each have access to oral or written business information and trade secrets of the other party not generally known to the public, "Confidential Information". Such Confidential Information may be disclosed to employees of either party as a result of such employees' access to a non-public area in the other party's premises or may be disclosed orally or in the delivery of documents or other tangible personal property. The premises of each party not open to the general public are regarded as confidential and any information observed by or disclosed to an employee of either party while on such premises of the other party shall be deemed to be Confidential Information. The terms and conditions of this purchase order shall be considered Confidential Information. Neither party shall, without the written authorization of the other, use for its own account or the account of any other person or entity, or communicate or disclose to any person or entity (except for employees and agents who have a need to know such information in order to perform their contractual obligations hereunder), either directly or indirectly under any circumstances or at any time, any Confidential Information. A party shall use the same standard of care to protect the other party's Confidential Information as they do for their own Confidential Information but, in any event, not less than a reasonable standard of care. If a party is required by legal process to disclose Confidential Information belonging to the other party in connection with any judicial or administrative proceeding, it shall be entitled to disclose such Confidential Information provided that it shall give the other party prompt written notice and, to the extent reasonably possible, an opportunity to intervene and defend its confidentiality interest. Vendor shall not, without the express prior written consent of Advance, use Advance's name or identifying marks in any manner including, but not limited to, in any marketing or advertising, or cause any other publicity involving Advance's name or identifying marks including, but not limited to, any public announcement or issue any press release with respect to this purchase order or the terms contained herein.

9. Miscellaneous - Each party shall be and act as an independent contractor and not as a partner, joint venturer, or agent of the other. The failure of either party to enforce its rights under this purchase order at any time for any period shall not be construed as a waiver of such rights unless such waiver is set forth in writing and signed by the waiving party. In the event that any provision of this purchase order shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this purchase order shall otherwise remain in full force and effect and enforceable. Any change in the terms and provisions of this purchase order must be expressly agreed to in writing by an authorized representative of Advance. In the event Vendor and Advance have entered or enter into a written agreement that also covers the purchase order transaction (a "Written Contract") and certain terms and provisions of this purchase order conflict with certain terms and provisions of the Written Contract, the terms and provisions of the Written Contract shall govern over the conflicting terms and provisions of this purchase order.

10. Notices - All legal notices shall be in writing and be sent by one party to the other by hand delivery, certified mail, return receipt requested or overnight courier services, receipt requested, addressed to the parties at the addresses set forth in the purchase order with a copy of every notice to Advance to also go to the Advance Legal Department, 5008 Airport Road, Roanoke, Virginia 24012. Notices shall be effective upon delivery or the refusal to accept delivery.

11. Governing Law - This purchase order shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to its conflict of laws rules. The parties agree that the United Nations Convention on Contracts for the International Sales of Goods and the Uniform Computer Information Transactions Act shall not apply. **JURISDICTION AND VENUE FOR ALL MATTERS RELATED TO THIS PURCHASE ORDER SHALL BE IN THE FEDERAL AND STATE COURTS LOCATED IN THE CITY OF ROANOKE, VIRGINIA, AND ANY LAWSUIT ARISING OUT OF OR RELATED TO THIS PURCHASE ORDER SHALL BE BROUGHT ONLY IN SUCH COURTS. VENDOR AND ADVANCE KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT WHICH EACH OF THEM, RESPECTIVELY, MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS PURCHASE ORDER.**

12. Termination - This purchase order may be terminated by either party upon a material breach of this purchase order and the failure of the defaulting party to cure such breach within fifteen (15) calendar days after written notice of the breach is provided to the defaulting party. This purchase order may be terminated by Advance, without cause, upon written notice to Vendor. In the event Vendor continues to perform and Advance continues to accept the delivery of Products and/or the performance of Services after the end of the stated term of this purchase order, the terms and provisions of this purchase order shall be deemed extended on a month-to month basis and may thereafter be terminated by Vendor on thirty (30) days written notice to Advance.

13. Enforcement - If, in the enforcement of the terms and conditions of this purchase order, Advance shall incur expenses or costs (including, but not limited to, reasonable attorney fees), Vendor agrees to pay and reimburse Advance for such expenses and costs.

14. Assignment - Vendor may not assign or subcontract its obligations under the purchase order without the prior written consent of Advance. Every Vendor agent and subcontractor shall fully comply with the terms and provisions of this purchase order and Vendor shall be fully responsible for the compliance of every agent or subcontractor with the terms and provisions of this purchase order.

15. Third Party Beneficiaries - The purchase order is for the exclusive benefit of Vendor and Advance and there shall be no third party beneficiary to any of the provisions of the purchase order.

16. Survival - The foregoing terms and provisions shall survive the termination or expiration of the purchase order.