

MOUNTAIN HORSE LLC D/B/A MOUNTAIN HORSE SOLUTIONS
PURCHASE ORDER TERMS AND CONDITIONS
("PO TERMS AND CONDITIONS")

Mountain Horse LLC d/b/a Mountain Horse Solutions (MHS) hereby issues the attached **Purchase Order (PO)** to Vendor and incorporates the following Terms and Conditions, which are accepted and agreed by Vendor as applicable to the PO. Additional terms and conditions may be set forth in the PO. Any and all terms and conditions submitted by Vendor as part of an invoice or otherwise are of no force or effect.

ACCEPTANCE

MHS may consider its written acceptance of any offer submitted by Vendor in response to a Request for Quotation by MHS to be a binding agreement. Fulfillment by Vendor of the items and/or services ordered by MHS constitutes consent by the Vendor to these Terms and Conditions. A signed PO shall also constitute acceptance by Vendor of these Terms and Conditions.

BRAND NAMES

The Vendor shall provide the goods and/or services as proposed to include brand names and part numbers proposed. Strict compliance with the PO is required and no substitutions are acceptable without the prior written consent of MHS.

FREIGHT

All item(s) unless otherwise specified in the PO shall be FOB Destination.

DELIVERY

The goods and services required by the PO shall be delivered in accordance with the delivery schedule contained in the PO. The time of delivery stated is of the essence. The date specified for delivery is the required delivery date at the designated destination, unless otherwise expressly noted in the PO. Delivery shall not be deemed complete until the goods have been received and accepted by MHS, notwithstanding delivery to any carrier, or until orders for services have been performed, received, and accepted by MHS.

INSPECTION

All materials furnished and services performed pursuant hereto shall be subject to inspection and testing by MHS and its agents and by its customers. In the event that goods supplied are not provided in accordance with the PO, or applicable specifications and instructions of MHS, MHS may require prompt correction thereof, or as to services, require that the services be corrected or rendered again at Vendor's expense. If such defects exist, and if Vendor is unable or refuses to replace the goods or render the services again promptly in a manner conforming to the PO or applicable specifications and instructions of MHS, MHS may terminate the PO for default, with no liability to MHS.

FEES; PAYMENT

Terms for the payment of Vendor's invoices by MHS will be specified on the individual PO. Vendor's invoices shall contain such detail and information as reasonably requested by MHS. Payment shall not constitute final acceptance by MHS.

Vendor's total charges shall be set forth in the PO. The charges specified in the PO are the total charges, including all amounts Vendor shall charge to MHS to complete Vendor's obligations under the PO; no other fees, costs or expenses may be charged to MHS except as set forth in the PO.

All amounts payable under the PO are exclusive of any value added, goods and services, sales, excise or similar taxes ("Taxes"). If required by any law, statute, or regulation, Vendor will collect from MHS and remit to the appropriate authorities, any Taxes applicable to the provision of the goods or services. Vendor will issue the required tax invoice to MHS unless MHS provides Vendor with a timely and valid tax exemption certificate authorized by the appropriate taxing authority. If MHS has paid such Taxes to Vendor, MHS shall have no other responsibility with respect to such Taxes and Vendor shall be responsible for promptly paying such Taxes to the appropriate taxing authority.

If Vendor stated a standard restocking fee in its response to the MHS request for quotation, and in the event MHS's customer reduces the quantity of materials after delivery, MHS will comply with the "Restocking Fee" provided in the Vendor's corresponding quote.

WARRANTY

Vendor represents and warrants:

- (a) that all goods delivered pursuant hereto will be new, unless otherwise expressly permitted by MHS, and free from defects in material and workmanship, and that all services will be delivered in a professional and workmanlike manner;
- (b) that all goods and services will conform to applicable specifications, drawings, and standards of quality and performance, and that all items will be free from defects in design and suitable for their intended purpose;
- (c) that the goods covered by this order are fit and safe for consumer use, if so intended;
- (d) Vendor's performance hereunder, including its provision of goods and services, will be in accordance with all applicable laws, rules and regulations; and
- (e) that Vendor has sufficient right, title and interest in the goods and services to provide them to MHS (including its customers) as contemplated hereunder.

All Original Equipment Manufacturer ("OEM") warranties' flow to MHS, which may then be assigned by MHS to its customer(s) and such warranties do not commence until the goods and services are accepted by MHS's customer.

All representations and warranties of Vendor, together with its service warranties and guarantees, if any, shall run to MHS and MHS's customers. The foregoing representations and warranties shall survive any delivery, inspection, acceptance, or payment by MHS.

Vendor shall comply with the minimum service life for the offered good as provided for in the PO, Vendor's documentation related to the good, or in Vendor's quote to MHS (if one was provided), whichever service life is longer.

CHANGES

MHS may, by written notice to Vendor at any time before completion of the PO or complete delivery is made under the PO, make changes within the general scope of the PO in any one or more of the following: (a) drawings, designs, or specifications; (b) quantity; (c) place of delivery; (d) method of shipment or routing; and/or (e) make changes in the amount of MHS furnished property. If any such change causes a material increase or decrease in the cost of, or the time required, for the performance of any part of the work under the PO and upon receipt of written notice thereto, MHS shall make an equitable adjustment in the PO price or delivery schedule, or both, and shall modify the PO via amendment thereto. The Vendor must have notified MHS in writing of any request for such adjustment within fourteen (14) days from the date of such notice from MHS or from the date of any act of MHS that Vendor considers constitutes a change. Vendor shall proceed with the work as changed without interruption.

CONFIDENTIALITY; NON-DISCLOSURE; INTELLECTUAL PROPERTY

Vendor agrees that it will keep confidential and not disclose, disseminate or publish the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data, computer programs and software or other technical or proprietary information furnished, loaned or bailed by MHS hereunder (hereinafter collectively referred to as "Items/Information"), and Vendor further agrees that it will use such Items/Information only in the performance of the PO or, if authorized, other POs from MHS and not otherwise without MHS's prior written consent. Notwithstanding any other provision herein, MHS and Vendor shall each retain ownership of, and all right, title and interest in and to, their respective pre-existing intellectual property unless there is a requirement for the assignment of intellectual property rights in the terms of the PO or the corresponding RFQ.

All Items/Information furnished, loaned or bailed by MHS hereunder, for the performance of the PO and specifically charged to MHS, are the property of MHS. Upon completion, expiration or termination of the PO, Vendor shall return all Items to MHS in good condition, reasonable wear only excepted, together with all spoiled and surplus Items to MHS, or make such other disposition thereof as may be directed or approved by MHS. Vendor shall make no charge for any storage, maintenance or retention of such Items. Vendor shall bear all risk of loss for all such Items in Vendor's possession.

Vendor also agrees to use any designs or data contained or embodied in such Items in accordance with any restrictive legends placed on such Items by the MHS or any third party. If MHS furnishes any material for fabrication hereunder, Vendor agrees: (a) not to substitute any other material for such fabrication without MHS's prior written consent, and (b) that title to such material shall not be affected by incorporation in or attachment to any other property.

Vendor shall not disclose information regarding the PO to any third party, unless such disclosure is necessary for the performance of Vendor's obligations under the PO, and then only to the extent necessary for such performance. No news releases, public announcement, denial or confirmation of any part of the subject matter of any PO or any phase of any program hereunder shall be made without prior written consent of MHS. The restrictions of this clause shall continue in effect for a period of five (5) years upon completion of the PO or as the parties may mutually agree in writing upon termination of the PO. In the absence of a written established period, no disclosure is authorized. Failure to comply with the provisions of this clause may be cause for termination of the PO. If Vendor and MHS have entered into a separate agreement regarding confidentiality and/or non-disclosure, then the terms of that agreement shall supplement the terms and conditions of this clause, and where more restrictive, supersede the terms and conditions of this clause.

Subject to the confidentiality provisions of the PO, each party retains the right to use its skill and the knowledge, experience, and know-how, including ideas, concepts, and techniques, whether developed prior to, independently of, or in the course of performing, receiving, or using the services provided by Vendor.

INSURANCE PROVISION FOR PROCUREMENT POS /SUBCONTRACTS

Without prejudice to Vendor's liability to indemnify MHS, Vendor shall procure at its expense and maintain for the duration of any properly awarded PO, and ensure that any of its subcontractors used in connection with the PO procure and maintain, the insurance policies required below with financially responsible insurance companies, and with policy limits not less than those indicated below.

(a) MHS Employer's Liability: Coverage for injuries to employees not covered by workers' compensation with limits of at least \$1,000,000 each accident, \$1,000,000 each employee by disease, and \$1,000,000 policy limit by disease.

(b) Commercial General Liability: Coverage for third party bodily injury and property damage, personal injury, products and completed operations, contractual liability, and independent subcontractors' liability with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

The required insurance coverage above shall be primary and non-contributing with respect to any other insurance that may be maintained by MHS and notwithstanding any provision contained herein, the Vendor, and its employees, agents, representatives, consultants, subcontractors and suppliers, are not insured by MHS, and are not covered under any policy of insurance that MHS has obtained or has in place.

Vendor shall make available upon MHS request current certificates of insurance evidencing the insurance policies above. Failure of MHS to demand such certificates or to identify any deficiency in the insurance provided shall not be construed as or deemed to be a waiver of Vendor's, or its subcontractors', obligations to maintain the above insurance.

INDEMNIFICATION

Vendor shall defend, indemnify and hold MHS and MHS's customers harmless from and against any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees) ("Damages") arising out of or relating to any actual or threatened claims, causes of action, lawsuits or other proceedings ("Claims"), regardless of legal theory, resulting in whole or in part, from Vendor's (or any of Vendor's subcontractors, suppliers, employees, agents or representatives):

(a) intentional misconduct, negligence, or fraud;

(b) breach of any representation, warranty or covenant made herein;

(c) non-compliance with any applicable law, rule or regulation; or

(d) products or services including, without limitation, any claims that such products or services infringe any United States patent, copyright, trademark, trade secret or any other proprietary right of any third party.

MHS shall promptly notify Vendor of any claim against MHS that is covered by this indemnification provision and shall, at its option, authorize representatives of Vendor, at Vendor's sole cost and expense, to settle or defend any such Claim, subject to approval by Final Resources, and to represent MHS in, or to take charge of, any litigation or other form of dispute resolution in connection therewith.

INFRINGEMENT INDEMNITY

Vendor shall defend, indemnify and hold MHS, including its shareholders, officers, employees, agents and customers, harmless from any Damages arising out of or relating to any Claims based on an allegation that any good or service furnished under the PO infringes any third party intellectual property rights, provided that Vendor is notified in writing of the suit and given authority, information, and assistance at Vendor's expense for the defense of same. If the use or sale

of said item is enjoined as a result of such suit, Vendor, at no expense to MHS, shall obtain for MHS and its customers the right to use and sell said item or shall substitute an equivalent item acceptable to MHS and extend this patent indemnity thereto.

Notwithstanding the foregoing paragraph, when this order is performed under the authorization and consent of the U.S. Government to infringe U.S. Patents, Vendor's liability for infringement of such Patents in such performance shall be limited to the extent of the obligation of MHS to indemnify the U.S. Government.

DEFAULT

MHS may, by written notice of default to the Vendor and in addition to any other remedies it may have, terminate the whole or any part of any PO in any one of the following circumstances:

- (a) if Vendor fails to make progress in the work so as to endanger performance or delivery of the goods or to perform the services within the time specified herein or any extension thereof;
- (b) if Vendor fails to perform any of the other provisions of the PO and does not cure such failure within a period of ten (10) days (or such longer period as MHS may authorize in writing) after receipt of notice from the MHS specifying such failure;
- (c) Vendor becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors or admits in writing its inability to pay its debts as they become due; or
- (d) if MHS's customer terminates its need for the goods or services.

If the PO is terminated by MHS for cause, MHS may procure or otherwise obtain, upon such terms and in such manner as MHS may deem appropriate, goods and/or services similar to those terminated, and Vendor, subject to the exceptions set forth below, shall be liable to MHS for any excess costs of such similar goods or services. If the termination by MHS is for reasons other than for cause, Vendor shall submit a final termination settlement proposal to MHS. The Vendor shall submit the proposal promptly but no later than ten (10) days from the effective date of the termination. If Vendor fails to submit the proposal within the time allowed, MHS may determine the amount, if any, due the Vendor resulting from the termination.

Upon termination, Vendor shall transfer title and deliver to MHS, in the manner and to the extent requested in writing by MHS, such complete articles, partially completed articles and materials, parts, tools, dies, patterns, jigs, fixtures, plans, drawings, Deliverables, information and rights as Vendor has produced or acquired for the performance of the terminated part of the PO, and MHS will pay Vendor the PO price for complete articles delivered to and accepted by MHS (unless such acceptance has been impaired by Vendor's breach) and the fair value of the other property of Vendor so requested and delivered.

Vendor shall continue performance of the PO to the extent not terminated. In case of Vendor's default, MHS's rights as set forth herein shall be in addition to MHS's other rights although not set forth in the PO.

Vendor shall not be liable for damages resulting from default due to unforeseeable causes beyond the Vendor's control and without Vendor's fault or negligence, provided, however, that if Vendor's default is caused by the default of a subcontractor or supplier, such default must arise out of unforeseeable causes beyond the control of both Vendor and their subcontractor(s) or supplier(s), and without the fault or negligence of either of them and, provided further, the goods or services to be furnished by the subcontractor(s) or supplier(s) were not obtainable from other sources.

NON-WAIVER OF RIGHTS

The failure of MHS to insist upon strict performance of any of the terms and conditions in the PO, or to exercise any rights or remedies, shall not be construed as a waiver of its rights to assert any of the same or to rely on any such terms or conditions at any time thereafter. The invalidity in whole or in part of any term or condition of these Terms and Conditions shall not affect the validity of other parts hereof.

APPLICABLE STATE LAW AND COMPLIANCE

This PO shall be governed by and construed in accordance with the laws of the State of Colorado. Vendor agrees to comply with the applicable provisions of any federal, state or local law or ordinance and all orders, rules and regulations issued thereunder.

EXPORT CONTROL COMPLIANCE FOR FOREIGN PERSONS

The subject technology of the PO (together including data, services, and hardware provided hereunder) may be controlled for export purposes under the International Traffic in Arms Regulations (“ITAR”) controlled by the U.S. Department of State or the Export Administration Regulations (“EAR”) controlled by the U.S. Department of Commerce. ITAR controlled technology may not be exported without prior written authorization and certain EAR technology requires a prior license depending upon its categorization, destination, end-user and end-use. Exports or re-exports of any U.S. technology to any destination under U.S. sanction or embargo are forbidden.

Access to certain technology by Foreign Persons (working legally in the U.S.), may require an export license if the controlled technology would require a license prior to delivery to the Foreign Person’s country of origin. Vendor is bound by U.S. export statutes and regulations and shall comply with all U.S. export laws. Vendor shall have full responsibility for obtaining any export licenses or authorization required to fulfill its obligations under the PO.

Vendor hereby certifies that all Vendor employees who have access to controlled technology are U.S. citizens, have permanent U.S. residency or have been granted political asylum or refugee status in accordance with 8 U.S.C. §1324b(a)(3). Any non-citizens who do not meet one of these criteria are “Foreign Persons” within the meaning of this clause but have been authorized under export licenses to perform their work hereunder.

STANDARDS OF BUSINESS ETHICS & CONDUCT

MHS believes in fair and open competition and is committed to conducting its business fairly, impartially and in an ethical and proper manner. MHS is a small business with the highest quality and ethical standards. These characteristics make it imperative that MHS employees adhere to a particularly high ethical standard. MHS ownership both demands and fosters highly ethical conduct because MHS can be successful only when employees look after long-term interests of the company and resist pressures to compromise MHS’s standards. MHS’s expectation is that Vendor also will conduct its business fairly, impartially and in an ethical and proper manner.

PACKAGING, MARKING, AND SHIPPING

All goods provided by Vendor shall be packaged, marked, and shipped in accordance with the PO. The Vendor shall guarantee that all required reports should be delivered in legible and acceptable condition.

(a) Packaging: For the purpose of reports, “immediately usable and acceptable condition” includes securing the pages together in a suitable and reasonable manner to be agreed upon by MHS. Boxes and/or other types of outer packaging, i.e., containers, wraps, etc., shall be suitable to the type of items being transmitted; and the mode of transportation utilized shall assure that such materials be received in an acceptable condition.

(b) Marking: All reports and/or other deliverable items under the PO shall be marked on the cover page with the following identifiers: 1. PO Number; and 2. Name of Vendor.

(c) Shipping: Shipping shall be accomplished by reasonable and suitable means that will ensure the integrity of the product delivered, in compliance with these Terms and Conditions.

PRODUCT RETURNS

In the event that the Vendor delivers broken or defective materials under the PO, the Vendor shall immediately issue to MHS a Return Materials Authorization (“RMA”) number, designate the address for the return, and replace the defective materials, at their expense.

MISCELLANEOUS

Vendor may not assign the PO or any interest herein, or delegate any obligation hereunder, without the prior written consent of MHS. If Vendor fails to obtain MHS’s prior written consent, any such assignment or delegation shall be null and void. For all permitted assignments and delegations, the PO shall bind and inure to the benefit of the parties and their successors and assigns.

Any signed PO shall be binding on the parties through facsimile or scanned and emailed signatures. All domestic notices, requests and demands, other than routine communications under the PO, shall be in writing and shall, if properly addressed, be deemed to have been duly given when delivered, or when transmitted by confirmed facsimile, or one (1) business day after being given to an overnight courier with a reliable system for tracking delivery, or three (3) business days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. All international notices, requests and demands, other than routine communications under the PO, shall

be in writing and shall, if properly addressed, be deemed to have been duly given when delivered, or when transmitted by confirmed facsimile, or three (3) business day after being given to an overnight courier with a reliable system for tracking delivery, or ten (10) business days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid.

Both parties agree that they are independent entities. Nothing in the PO shall be construed to create a partnership, joint venture, or agency relationship between the parties. Each party is responsible for the supervision, management, direction, employment costs, and payment of compensation of its own employees.

Unless otherwise expressly set forth in the PO, all remedies available to either party for breach of the PO are cumulative and may be exercised concurrently or separately, are in addition to any other rights and remedies provided by law, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies. No failure of either party to exercise any power or right granted hereunder to insist upon strict compliance with any obligation hereunder, and no custom or practice of the parties with regard to the terms and performance hereof shall constitute a waiver of the rights of such party to demand full and exact compliance with the terms of the PO.

These Terms and Conditions, the PO and its exhibits, appendices, or any other attachments constitutes the entire understanding of the parties with respect to the subject matter herein. This PO may not be amended or modified by a PO, invoice or similar form, conduct manifesting assent, or by electronic signature, and each party is hereby put on notice that any individual purporting to amend or modify the PO by a PO, invoice or similar form, conduct manifesting assent or by electronic signature is not authorized to do so. No effect will be given to any click-wrap, browse-wrap or other pre-printed standard license agreement for any deliverable supplied by Vendor under the PO. No waiver of any provision or right hereunder will be valid unless it is in writing and signed by the party giving such waiver.

If any provision of the PO is held by a court of competent jurisdiction to be overly broad, excessive, or unenforceable in any circumstances or to any extent, then the remainder of the PO and the application of such provision or portion in all other circumstances shall be valid and enforceable to the fullest extent permitted by law or equity.