



# Purchase of Goods & Services Standard Terms and Conditions

(RAFTER-PUR-01 Purchase of Goods & Services Terms and Conditions)

## 1. DEFINITIONS

In these Terms and Conditions (“**Conditions**”), the “**Purchaser**” means Rafter Equipment Company, LLC business entity named in the Order, and the “**Supplier**” means the person, firm, or company to whom the Order is addressed (collectively as the “**Parties**”).

The “**Order**” means the agreement between the Purchaser and the Supplier for the supply of the Goods and/or the Works incorporating these Conditions and any other appendices as appropriate.

The “**Price**” means the sum payable to the Supplier as stated in the Order, which shall be exclusive of tax but inclusive of all other charges.

The “**Goods**” means the goods, plant, machinery, apparatus, materials, documentation, and the like, supplied or to be supplied under the Order.

The “**Works**” means the services, labor, activities, work, and the like to be performed by the Supplier under the Order and includes, where the context so admits, the Goods.

The “**Deliverables**” means collectively the Goods and/or the Works.

## 2. PRECEDENCE

The documents forming this Order are to be taken as mutually explanatory of one another. In the event of any conflict or ambiguity between the various documents, the order of precedence shall be in the order as listed below:

- (a) Order; so
- (b) Special Terms and Conditions;
- (c) These Conditions; and
- (d) Any ancillary appendices attached to the Order.

## 3. CONDITIONS

All Orders for the supply of Goods to the Purchaser and/or execution of Works for the Purchaser are entered by the Purchaser only upon these Conditions. Subject only to Condition 4 hereof, anything in any document forming part of or incorporated in any such Order which is inconsistent with these Conditions or any part thereof shall have no effect and every such document shall be deemed to incorporate only these Conditions. Any acceptance or acknowledgment of the Order by Supplier (including without limitation by beginning performance of any of the Works called for in the Order), even if containing or referencing terms or conditions inconsistent with or in addition to the Conditions shall be deemed as a full acceptance by Supplier of the Order, and the inconsistent or additional terms or conditions shall be deemed ineffective, unless they were specifically and expressly accepted by Purchaser in writing.

## 4. VARIATIONS AND AMENDMENTS

- 4.1 Unless otherwise stated, the Price is fixed for the duration of the Order and no increases shall be accepted unless related to a written amendment issued by the Purchaser.
- 4.2 The Purchaser may instruct variations of and extras to the Order at any time. Any such instructions must be confirmed by a formal written amendment issued by the Purchaser. If any changes cause an increase or decrease in the cost of, or the time required for the performance of, any work under this Order, an equitable adjustment shall be agreed between the Parties in writing. Should the Parties fail to reach an agreement on cost or time required, Supplier shall continue work under the Order including any change advised by the Purchaser, while the Parties negotiate an agreeable settlement.
- 4.3 Any Supplier claim for adjustment under this clause will be deemed waived unless asserted within ten (10) days from Supplier’s receipt of the change or suspension notification, and may only include reasonable, direct costs that will necessarily be incurred as a direct result of the change.
- 4.4 Supplier shall be entitled to request a change and Purchaser shall, at its sole discretion, either approve or reject such change in writing.
- 4.5 No variation of or addition to these Conditions shall be effective unless in writing and signed for and on behalf of the Purchaser and the Supplier.

## 5. TIME FOR COMPLETION

- 5.1 The time stipulated for delivery of the Goods, or as the case may be for completion of the Works, shall be the delivery date and at the delivery address, both as specified in the Order. If the Supplier fails to deliver within such time, Supplier shall pay



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the Purchaser, as liquidated damages for delay, at the rate specified in the Order for each week for which the Supplier fails to complete the delivery of the Goods, or complete the Works, up to a maximum amount as stated in the Order. The Purchaser shall be entitled to immediately terminate the Order where the liquidated damages reach the maximum amount specified in the Order.

- 5.2 If, in order to comply with Purchaser's required delivery date, it becomes necessary for Supplier to ship by a more expensive way than specified in the Conditions or in an Order, any resulting increased transportation costs shall be paid for by Supplier unless the necessity for such rerouting or expedited handling has been caused solely by Purchaser.
- 5.3 If it becomes apparent that delivery or completion cannot be accomplished within the time specified, Supplier shall at its own cost take all necessary steps to expedite the progress of the Order, including, but not limited to working additional shifts, overtime, providing additional manpower, equipment, and air freighting to meet the delivery date(s) required by the Order.

## 6. DELIVERY, TITLE, RISK OF LOSS, AND REJECTION OF GOODS

- 6.1 Where the Order is for the supply of Goods, delivery shall occur when the Goods have been delivered, including the provision of all required documentation and with correct packing, in accordance with the Incoterm stated in the Order, per Incoterms 2020.
- 6.2 The property in the Goods or any part thereof shall pass to the Purchaser at the earlier of the following:
  - (a) materials or parts of the Goods are set aside for the Contract;
  - (b) the Purchaser accepts delivery; or
  - (c) the Supplier becomes entitled to any payment in respect thereof.
- 6.3 Where the Contract is to supply Goods, the risk in the Goods shall not pass to the Purchaser until the Purchaser accepts delivery thereof at the delivery address as specified in the Order.
- 6.4 Where the Contract is to supply Works, the risk in the Works shall not pass to the Purchaser until such Works are complete as stated in the Order.
- 6.5 In the case of Goods delivered by the Supplier not being fit for the purpose specified, or not being of the stipulated quality, weight or measurement, or otherwise not compliant, and if after being notified thereof the Supplier has not rectified or replaced the same within fourteen (14) days, the Purchaser shall have the power to reject any such Goods or materials and to purchase elsewhere as nearly as practicable to the same specification and conditions as circumstances shall admit, and any additional costs howsoever incurred shall be paid by the Supplier to the Purchaser. Alternatively the Purchaser reserves the right to rectify such Goods either himself or by others on his behalf; costs being back charged to the Supplier.

## 7. WARRANTY

- 7.1 The Goods shall be fit for the purpose specified and conform in every respect as to quantity, quality, performance, and description with any drawing or specification set out or referred to in the Order, or attached to these Conditions as an appendix, and be of the most appropriate materials and best workmanship for Goods of that type.
- 7.2 Any part of the Goods or Works (including any part replaced under this Condition) which is defective owing to fault in material, workmanship, or design, or which are not fit for the purpose specified in the Order, shall be replaced by the Supplier free of charge to the Purchaser, but without prejudice to any right or remedy which shall have accrued or shall thereafter accrue to the Purchaser. The "Warranty Period" shall be stated in the Order, or if no such period is mentioned, it shall be twelve (12) months from the date of commencement of commercial operation of the Goods or Works in Purchaser's assembly, or eighteen (18) months from Delivery, whichever is the earlier.

## 8. ASSIGNMENT AND SUBCONTRACTING

The Supplier shall not, without the consent in writing of the Purchaser, assign, transfer or subcontract the Order, or any part thereof, or make any sub contract with any person, firm, or company for the execution of any portion of the Goods or of the Works other than for the supply of unprocessed materials. Any such consent shall not relieve the Supplier from any of his obligations under the Order. The Supplier shall supply the Purchaser with two unpriced copies of sub orders placed by the Supplier.

## 9. REPORTS, INSPECTION, REJECTION OR AMENDMENT AT SUPPLIER'S WORKS

- 9.1 The Supplier shall at the request of the Purchaser furnish the Purchaser with regular reports showing the availability of material parts and the manufacturing status of the items covered by the Order. The Supplier shall afford to the Purchaser's representative, inspectors, or any inspecting authority nominated by the Purchaser access to the Supplier's manufacturing



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areas at all reasonable times where the material parts and assemblies are being produced. In the event that part of the Order is sub-contracted by the Supplier, the Supplier will make arrangements for the Purchaser's representative to visit sub-contractors on a similar basis.

9.2 The Works shall be subject to expediting and inspection by Purchaser and as may be required by Purchaser's principals.

9.3 The Purchaser shall be given a certificate of the results of any test of the Goods or Works carried out by the Supplier or the manufacturer or importer of the Goods or Works. Where the Order prescribes any tests or performance parameters for the Goods or Works, the Supplier shall carry out such tests and otherwise ensure such performance. The Supplier shall give reasonable notice and full opportunity to the Purchaser to witness all such tests. If the Purchaser fails to attend such tests at the notified time and place, the Supplier may proceed in its absence. However, should the Purchaser so request prior to such notified time the Supplier shall hold such tests at such reasonable alternative time and place as the Purchaser may require. No approval of the goods or failure to reject the Goods by the Purchaser pursuant to any inspection or tests of the Goods or otherwise shall prejudice any right of the Purchaser under the Order.

## 10. INVOICES

10.1 Invoices in respect of Goods must be submitted at the time of completion of Order requirements, with a copy advice note to be forwarded to the address in accordance with the Order. Invoices not stating the Order number will be rejected. Payment of undisputed amounts of the Price shall, unless stated otherwise in the Order, be made according to the terms identified in the Order, following receipt of a valid invoice, and the parties expressly agree to this payment period.

10.2 Purchaser shall have the right to set-off or deduct all claims for money due or to become due to Supplier by reason of any counterclaim arising out of this or any other transaction between Purchaser and Supplier.

## 11. INDEMNIFICATION

Supplier shall indemnify Purchaser from and against any claim concerning:

- (a) Personal injury to or loss of life of any personnel arising from or relating to Supplier's performance of this Order;
- (b) Loss of or damage to any property (whether Supplier's, Purchaser's, or any Third Party's) arising from or relating to Supplier's performance of this Order;
- (c) Any other liability towards a third party arising from or relating to the Supplier's performance of this Order;
- (d) Any claim from a third party resulting from infringement of intellectual property rights in connection with the Goods or Works rendered, or Purchaser's or End-User's future utilisation of the Work; or
- (e) Supplier's breach of Condition 18 or Condition 19 of these Conditions.

## 12. INSURANCE

12.1 The supplier shall insure and keep insured during the execution of the Works covered by the Order, with a reputable insurance company and with minimum level of cover as specified in the Order, and when required to do so by the Purchaser, produce evidence of such insurance. Where no such amount is specified, Supplier shall be required to maintain the following insurance coverage: (1) Public and Products Liability coverage with an aggregate limit of \$1,000,000 or the Price, whichever is the greater; and (2) Employers' liability coverage or workers' compensation coverage as required by applicable law.

12.2 Pursuant to Condition 11, prior to Supplier commencing Work hereunder, Supplier shall obtain from each of its insurers; in respect of all legal liability policies and agreement from the insurers to waive their rights of subrogation and other rights of recourse against the Purchaser or the Purchaser's principals.

12.3 If the Supplier fails to provide or maintain any of the foregoing insurance, the Purchaser shall have the right to provide or maintain such coverage at Supplier's expense. Neither the procurement, maintenance, nor limits of coverage, shall relieve the Supplier of liability for loss or damage.

## 13. OVERALL LIABILITY

13.1 The Supplier's overall liability to the Purchaser under this Order shall be stated in the Order or, where no such limit is stated, the limit shall be the Price.

13.2 The limit of liability described in Condition 13.1 shall not apply to Supplier's wilful misconduct, fraud, tax obligations, breach of applicable law, or Supplier's Indemnity obligations pursuant to Condition 11.

13.3 Neither Party shall be liable to the other by any way of indemnity, or by reason of breach of the Order, or of statutory duty, or by reason of tort (including but not limited to negligence), or any other reason whatsoever for any loss of profit, loss of business, loss of contracts, or for any special, indirect, economic, or consequential losses or damages.



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## 14. PURCHASER'S RIGHTS IN PLANS, DRAWING, PATTERNS ETC

- 14.1 Any specification, plans, drawings, patterns, or designs supplied by the Purchaser to the Supplier, which have not been disclosed by Purchaser to the public or are not known to the general public, shall remain the property of the Purchaser, and any information derived therefrom or otherwise communicated to the Supplier in connection with the Order shall be regarded by the Supplier as secret and confidential and shall not, without the consent in writing of the Purchaser, be published or disclosed to any third party or made use of by the Supplier except for the purpose of implementing the Order. Any specifications, plans, drawings, patterns, or designs supplied by the Purchaser must be returned in good order unless otherwise agreed.
- 14.2 Where development forms part of the Order, the ownership of any intellectual property rights, including but not limited to patents, registered and unregistered designs, and copyright arising from such development shall be transferred to the Purchaser and the Supplier shall cooperate in any measure necessary to make such transfer effective as soon as any such right arises.
- 14.3 The Supplier shall not disclose or use any Purchaser-supplied information except to the extent required to perform this Order. All information supplied by Purchaser shall be considered confidential. Supplier shall not permit copies to be made of any of Purchaser's information without Purchaser's prior written authorization; in which case Seller shall mark the copy "Confidential." These confidentiality obligations shall continue indefinitely. Upon expiration or termination of this Order, for any reason, or at any time upon Purchaser's request, Supplier shall promptly return to Purchaser or, if authorized by Purchaser, destroy all confidential information, including any copies thereof.

## 15. PURCHASER'S EQUIPMENT

All property of the Purchaser at any time in the hands of the Supplier, including but not limited to any patterns/drawings, tools, or other equipment furnished by the Purchaser to the Supplier, shall be used only for the purposes of the Order unless otherwise authorised by the Purchaser. The Supplier shall maintain such property in good condition, fair wear and tear excepted, and shall take all reasonable care to protect the same from loss or damage. The Supplier shall maintain insurance against loss or damage of such property. The Supplier shall produce satisfactory evidence of such insurance including premium receipts whenever required to do so by the Purchaser. Supplier's use of Purchaser's Equipment is at its own risk and all Purchaser's Equipment is provided without warranty as to fitness for purpose. The Contractor shall indemnify and hold harmless the Purchaser against and from all liabilities, claims, actions, causes of action, costs, and expenses (including legal fees and expenses) of any nature for injury or death of any person or damage to property, or any claims howsoever arising out of, or which may be consequent upon or incidental or in any way attributable to, the Supplier's use of the Purchaser's Equipment.

## 16. SUSPENSION AND CANCELLATION

- 16.1 The Purchaser shall be entitled to cancel the Order in whole or in part at its discretion and without liability, save for reimbursement in the case of cancellation for reasons other than the Supplier's default, of the Supplier's reasonable costs properly incurred to the Purchaser's reasonable satisfaction prior to receipt of the Purchaser's notice of cancellation, less the value of material or work in progress usable by the Supplier or normally in its inventory or stock or otherwise recoverable by the Supplier, and which the Purchaser does not wish to obtain, plus such reasonable profit as the parties agree. All items for which costs are reimbursed shall be delivered by the Supplier to the Purchaser unless otherwise agreed.
- 16.2 In the event of default by the Supplier in the performance of any obligation hereunder, including but not limited to time of delivery and/or completion, or in the event it becomes apparent that delivery or completion cannot be accomplished within the time specified, or should the Supplier become insolvent, go into liquidation, bankruptcy, re-organisation, enter into any other arrangement or proceeding relating to any form of insolvency, the Purchaser may, in addition to its other rights or remedies, terminate this Order without penalty and/or liability, except for Deliverables previously received and accepted, charging the Supplier for direct and reasonable losses and damages sustained by reason of such termination. In such circumstances the Supplier shall ensure that full title to the Deliverables transfers to the Purchaser.
- 16.3 Purchaser may terminate this Order immediately without any further action by Purchaser if the Supplier violates any of these Conditions relating to import/export/conflict minerals, anti-bribery, or compliance with laws or codes of conduct.

## 17. FORCE MAJEURE

- 17.1 "Force Majeure" means an occurrence as specified below provided it is beyond the control of the Party affected and provided that such Party could not reasonably have foreseen such occurrence at the time of entering into the Order and could not reasonably have avoided it or overcome its consequences. Only the following events or occurrences shall constitute Force Majeure:
- (a) war (including civil war), riots, invasion, acts of terrorism, civil disturbance, acts of environmental activists or non-governmental organizations;
  - (b) piracy, sabotage, or embargoes;

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### RAFTER EQUIPMENT

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- (c) contamination by radioactivity from any nuclear fuel or from any nuclear waste;
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (e) acts of God, fire, explosion, epidemic, earthquake, hurricane, or other similar natural physical disaster;
- (f) any strikes or industrial disputes at a national, regional, or local level, other than a strike or industrial dispute of the personnel of the Supplier;
- (g) maritime or aviation disasters; and
- (h) change of laws, regulations, and any acts of government or authority having or asserting jurisdiction where the Work is executed;

17.2 Notwithstanding the above, the following events shall not, at any time, constitute Force Majeure:

- (a) any shortage in supply of equipment, materials, or people (other than as a result of any event or circumstance set out above);
- (b) any failure by the Supplier for reasons within its control to obtain or maintain any permit, consent, authorisation, or approval which it is responsible for obtaining under this Order;
- (c) lack of funds, financial hardship, or the inability or failure of a Party to make a payment due, make a profit, or achieve a satisfactory rate of return resulting from the performance or failure to perform its obligations under this Order.

17.3 A Party shall not be considered to be in breach of the Order to the extent it is proven that such Party was unable to fulfil its contractual obligation due to Force Majeure. The Parties shall cover their own costs resulting from Force Majeure. A Party wishing to invoke Force Majeure must notify the other Party immediately thereof, if not it will lose the right to claim that Force Majeure has occurred. Either Party is entitled to terminate the Order if the Force Majeure situation continues, or it is obvious that it will continue, for more than ninety (90) days. In the event of such termination, Purchaser's sole liability towards Supplier shall be the payment of the unpaid balance due to Supplier for that part of the Deliverables already completed. Purchaser may require the Deliverables, including any corresponding rights and documentation, to be delivered to Purchaser in its existing condition at the time of termination for completion by third parties.

### 18. COMPLIANCE

18.1 The Supplier represents and warrants that it will comply with all applicable laws in respect of activities contemplated by this Order, including without limitation, laws and regulations relating to taxation, exchange controls, and customs requirements, as well as with any anti-corruption, anti-trust, anti-money laundering, sanctions, or other applicable criminal law, rule, or regulation. ***In particular, the Supplier shall comply fully with the US Foreign Corrupt Practices Act and it represents, and warrants that, Supplier will not do anything which could contravene the Foreign Corrupt Practices Act or cause the Purchaser to contravene the Foreign Corrupt Practices Act.*** Furthermore the Supplier represents and warrants that it will not make an offer of, or accept, any inducement or bribe from any employee, agent, official, fiduciary, or any third party with the intent to influence the conduct of any such person or customer in relation to the purchase of the Deliverables.

18.2 Supplier acknowledges that Purchaser has adopted a Code of Conduct for Business Partners that governs, among other things, the Purchaser's relationships with suppliers. Supplier hereby agrees to conduct itself in its dealings with Purchaser at all times in accordance with such Code of Conduct for Business Partners and in a manner that is consistent and which facilitates compliance with such Code of Conduct for Business Partners.

18.3 Supplier, and any Deliverables supplied by Supplier, shall comply with all applicable laws, rules, regulations, export control laws, orders, conventions, ordinances, or standards in the Supplier's country, Purchaser's country, and the country(ies) of destination, whichever are more stringent, or that relate to the manufacture, labelling, transportation, importation, exportation, use, operation, licensing, approval, or certification of the Deliverables, including, but not limited to, those relating to environmental matters, product safety, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety, and motor vehicle safety.

### 19. IMPORT/EXPORT COMPLIANCE

19.1 Supplier shall provide Purchaser or Purchaser's designated agent with all necessary information, codes, and certificates in a timely fashion to enable Purchaser's compliance with any local Customs regulations. If Goods will be delivered to a destination country having a trade preferential or customs union agreement with Supplier's country, Supplier shall provide all required documentation to support the applicable special customs program to allow duty free or reduced duty for entry of Goods into the destination country.

19.2 Supplier hereby agrees that it shall not, except as said applicable laws and regulations may expressly permit, make any disposition by way of transshipment, re-export, diversion, or otherwise, of any Goods, technical data, or software, or the direct product thereof, furnished by either party in connection with this Order.



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19.3 Subject to applicable law, Supplier agrees that it will not supply any Goods to Purchaser under this Order that are sourced directly or indirectly from a designated economic sanctioned country defined by the United States. In addition, Purchaser may, from time-to-time and for business reasons, withdraw from and/or restrict its business dealings in certain jurisdictions, regions, territories, and/or countries. Thus, subject to applicable law, Supplier hereby agrees not to supply any Goods to Purchaser under this Order that are sourced directly or indirectly from any such jurisdiction, region, territory, and/or country identified to Supplier by Purchaser.

### 20. AUDIT

Supplier hereby grants Purchaser access to all pertinent records, correspondence, writings, drawings, and receipts related to this Order. Supplier further agrees to maintain such records and documents for a period of six (6) years after the termination or expiration of this Order. Supplier agrees to cooperate fully with Purchaser with all reasonable requests of Purchaser during an audit and agrees that such an audit may be used as the basis for settlement of all disputes which might arise regarding payments under this Order. Supplier shall be entitled to redact any pricing information from auditable documentation.

### 21. JURISDICTION

Any and all disputes arising between the Parties in connection with this Order, including the negotiation, interpretation, performance, breach, or termination thereof, shall be settled through amicable discussion between the Parties. If amicable settlement cannot be reached, the matters in dispute shall be resolved exclusively by binding arbitration pursuant to the Rules of the American Arbitration Association. The arbitration shall be conducted by a single arbitrator, and shall be held, absent agreement to the contrary, in Akron, Ohio. The award of the arbitrator shall be final and binding and not subject to judicial review, except as provided by law. The provisions of this Condition 21 shall survive the termination or expiration of the Order. This Order shall be governed by the laws of the State of Ohio without regard to its conflict of laws principles.

### 22. ENTIRE AGREEMENT

This Order shall constitute the entire agreement between Purchaser and Supplier. All previous proposals and communications related to the purpose of this Order, oral or written, including, but not limited to, Supplier's terms and conditions of sale, or the like, are hereby superseded.