



NISHATI, INC.
PURCHASE ORDER
TERMS AND CONDITIONS

1. Acceptance. As used herein, "Seller" means the legal entity that will sell the products to Nishati under a Nishati valid and signed Purchase Order; "Buyer" means Nishati, Inc.; "Purchase Order" (PO) means the Buyer's order for Seller's products. The purchase of products by Nishati, Inc. is governed by and subject to these Terms and Conditions. This PO constitutes Buyer's offer to Seller and is not an acceptance or confirmation. This PO becomes a binding contract only when it is accepted by Seller either by returning a copy signed on the acknowledgment line, or by commencement of performance. Buyer hereby objects to any additional or modified terms contained in Seller's acceptance. Any such terms will not be binding on Buyer unless expressly accepted, in writing, by Buyer.

2. Changes. Buyer shall have the right, at any time, to make changes, in writing, to and within the general scope of this PO in the services to be rendered or the goods to be furnished, or the time or place of performance by Seller. If such changes affect the time for performance or the cost of furnishing the goods or services, then Buyer will make an equitable adjustment in the price or schedule of this PO. Any claim by Seller for an adjustment under this clause must be asserted no later than 20 days from the date of receipt of the notice of change. Seller agrees to proceed with this PO, as changed, notwithstanding a mutually agreed price and/or delivery schedule has not been negotiated.

3. Shipping and Delivery. Time is of the essence in the performance of this PO by Seller. Shipment terms are in accordance with the INCOTERMS specified on the PO version accepted by Seller. Seller will promptly notify Buyer of any anticipated production delays, the reasons therefore, the length of the delay, and the means to avoid or minimize the delay. Any additional costs incurred to prevent or reduce delays are borne by Seller. If Seller fails to meet scheduled shipment dates, then Buyer may direct expedited routing and charge any excess costs incurred thereby to Seller. If Seller fails to produce the goods or perform the services as scheduled herein, then Buyer may cancel all or any part of this PO. Seller is not authorized to require shipments of goods (a) in advance of the scheduled shipment dates, or (b) that exceed the PO-specified quantity(ies). Buyer reserves the right to return all early or excess shipments to Seller and Seller shall pay for all strictly necessary packing, handling, sorting, and transportation expenses incurred in connection with such shipments.

4. Packing. Unless otherwise specified in the PO (a) all packing and crating of goods by Seller must be in compliance with carrier's tariffs and in suitable containers for protection in shipment and storage and (b) the Seller price(s) include all charges for Seller's packing, crating and transportation to the F.O.B. point. A packing list, which references this PO, shall accompany each shipment of goods. All packaging and insurance costs, if any, are assumed to be included in the Seller price of the goods, unless otherwise specified in the PO.

5. Title and Risk of Loss. Title to goods and liability for loss or damage shall transfer from Seller to Buyer according to the INCOTERMS specified on the PO version accepted in writing by Seller.

6. Seller will promptly notify Buyer of any anticipated production delays, the reasons therefore, the length of the delay, and the means to avoid or minimize the delay. Any additional costs incurred to prevent or reduce delays are borne by Seller.

7. Seller Inspection and Test. Seller Certificate of Compliance shall be provided to the Buyer upon request for a given shipment.

8. Buyer Receipt and Returns. All goods and services delivered shall be subject to inspection and test by Buyer at destination, within five (5) business days of receipt of the goods unless otherwise specified in the PO. Buyer will accept goods if they comply with the specifications set forth by the purchase order and any referenced documentation. If any goods or services are defective in material or workmanship, or are otherwise not in compliance with the PO requirements, Buyer shall notify Seller via e-mail or other means, and shall have the right to (a) reject such goods or services within five (5) business days; or (b) retain and correct defects at Seller's expense, or (c) return the goods or services to Seller and require correction by Seller at Seller's expense.

9. Remedies for Defective Product. Buyer will handle defective product in a commercially reasonable manner to maximize their value to Seller and Buyer and to minimize the loss and expense of the respective parties and their customer(s). Buyer shall make allegedly defective units readily available and accessible for inspection as requested by Seller or their agents. Rejected goods will be returned to Seller at Seller's risk for credit, and Seller shall pay to Buyer all costs incurred for packing, handling, sorting, and transportation expenses incurred in connection with the rejected goods. No inspection, test, or acceptance of any goods or services will relieve Seller from responsibility for, and correction of, defects or other failures to meet the requirements of this PO.

10. Warranty. Seller warrants that the goods furnished or the services performed will conform (a) to applicable specifications, drawings, designs, samples and/or other descriptions furnished or specified by Buyer; or (b) Seller's sales literature, and will be fit and sufficient for their intended use, merchantable, of good material workmanship, and free from defect (including, without limitation, defects of design unless the design was furnished by Buyer). Buyer may return any goods that are warranted, at Seller's expense, for correction, replacement, or credit, as Buyer may direct, within thirty (30) days of receipt of goods or reject services not in compliance with the statement of work and demand re-performance. In the event of any conflict between the Seller's sales literature and the terms of this PO, then the terms of this PO shall prevail. Any warranties offered by Seller shall not be deemed to limit any other warranties given to Buyer, or to limit Buyer's rights or Seller's obligations under any other provisions of this Order, at law or equity. No warranties are waived by Buyer by reason of Buyer furnishing specifications to Seller.

11. Indemnification. (a) Seller agrees to indemnify Buyer, and their employees and customers from all liability, loss, costs, damages or expenses, including costs of suit, and attorney, accountant, and consulting fees, which any one or more of them may suffer or incur as a result of Seller's breach of any warranty or any other term or condition of this warranty; (b) Seller further warrants that the sale, use, or incorporation into any goods or products of any rights furnished or licensed hereunder will be free and clear of any infringement of any valid patent, copyright, trademark, or other proprietary data, and agrees they will save and hold harmless Buyer and their agents, employees, and customers from any liability, loss, damage, cost or expense which may be incurred by reason of infringement of any patent, copyright, trade mark, or other proprietary rights, and that they will at their own expense defend any action, suit, or claim in which such infringement is alleged with respect to the goods or services delivered hereunder. Buyer will promptly notify Seller of any action brought against Buyer by a third party; (c) Seller agrees to indemnify Buyer against any liability, loss, cost, damage or expense by reason of Seller's noncompliance with Article 10, *infra*; (d) Seller will indemnify and save harmless Buyer from and against any and all



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damages, liabilities, penalties, fines, costs, and expenses, including accountant, attorney and consultant fees, arising out of claims, suits, allegations, or charges of Seller's failure to comply with the provisions of the export laws and regulations; (e) To the extent that Seller's agents, employees, invitees, or subcontractors enter upon premises occupied by or under the control of Buyer, or any of their customers, or suppliers, in the course of the performance of this Order, Seller must take all necessary precautions to prevent the occurrence of any injury to or death of any persons, or of any damage to any property arising out of acts or omissions of such agents, employees, invitees or subcontractors; and except to the extent that any such injury or damage is due directly and solely to Buyer's negligence, Seller will indemnify, defend, and hold Buyer, their officers, directors, consultants, employees and agents harmless from any and all costs, losses, expenses, damages, claims, suit or any liability whatsoever, including attorney, accountant, and consulting fees, arising out of any act or omission of Seller, their agents, invitees, employees, and subcontractors.

12. Assignment; Delegation. Seller may not assign their rights or delegate any of their performance under this PO, including subcontracting for all or any portion of the goods or services provided for herein, without the Buyer's prior written consent, which shall not be unreasonably withheld. Payments, however arising whether to Seller or to an assignee, will be subject to setoff or recoupment for claims which Buyer may have against Seller.

13. Compliance with Laws. Seller, at their sole expense, agrees to comply with all applicable local, state, and federal laws, and regulations, executive orders, and ordinances issued pursuant thereto, which may be applicable to the production of goods or the performance of services.

14. Publicity. Seller shall not authorize any news release, advertisement, or other disclosure that denies or affirms the existence of this PO nor identify the Buyer as part of any PO placed with Seller, without the prior written consent of Buyer.

15. Buyer's Data. Seller shall not use or disclose any data, designs, or other information belonging to or furnished by or on behalf of Buyer.

16. Invoicing and Payment. Seller may remit invoices to Buyer only after the goods or services have been accepted by Buyer, or at such times as specified in this PO. Seller must include Buyer's PO Number on all invoices, as well as packing lists, bills of lading, containers, and correspondence. Buyer will remit to Seller payment of approved amounts within thirty (30) days or as defined in this PO.

17. Taxes. The price stated on the face of this PO includes all federal, state, and local taxes, however designated, applicable to the goods and services purchased herein. On request, Buyer will provide appropriate and current tax exemption certificates.

18. Governing Law. POs will be constructed and interpreted according to United States Law. To the extent that the federal common law of government contracts is not applicable, the laws of Arizona shall apply without regard to choice of law principles or those laws regarding conflicts of law.

19. Remedies. The remedies herein reserved to Buyer are cumulative and in addition to any other remedies provided at law or equity or other terms of this PO.

20. Disputes. Any disagreement or conflict between the parties arising under or related to this PO shall be submitted in writing. The parties will use their best efforts to resolve any disagreements or conflicts between themselves escalating the negotiation to the most senior level of each party if necessary. If such disagreement or conflict cannot be resolved to the mutual satisfaction of both parties within 90 days after receipt of the written claim, or such additional time as the parties agree in writing, then either party may bring suit in a judicial district court, Maricopa County, Arizona. Pending any final decision, Seller will proceed diligently, as directed by Buyer, with performance of this PO.

21. Limitation of Liability. In no event, regardless of the nature of the claim or cause of action, including but not limited to contract claims or negligence, strict liability or other tort claims, shall buyer's liability to seller exceed the price paid by buyer for the products or services giving rise to the claim or cause of action. Under no circumstances will buyer be liable for any consequential, exemplary, special, incidental, or other indirect damages including, without limitation, loss of business, loss of profit, loss of business, even if buyer has been advised of the possibility of such damage or loss.

22. Ownership. Seller retains all patents, copyrights, trade secrets rights and other similar intellectual property rights of their creation in the goods and services and product documentation and all trademarks used on or with the goods and services. Buyer agrees to honor such rights within applicable law.

23. Severability. If any provision of this PO, or part thereof, becomes invalid or unenforceable by operation of law, such provision or part thereof, will be deemed severed, and the remainder hereof will continue in full force and effect.

24. Headings. The headings contained in this PO are for convenience of reference only, and in no way define, limit, or describe the scope of the PO.

25. Waiver. No waiver by the Buyer of any breach by the Seller of any obligations herein will constitute a waiver of a subsequent breach or of a breach of other Seller obligations.

26. Complete Agreement. This PO is the final, complete, and exclusive agreement between Buyer and Seller with respect hereof and supersedes and cancels all prior understandings, proposals, communications, whether oral or written, and agreements between Buyer and Seller. No usage of trade, and no course of dealing between Buyer and Seller, are relevant to, supplement, or explain any term or condition used herein.

27. Cross Guarantee. If any Seller affiliate takes any action which, if done by Seller would constitute a breach of this PO, then the same will be deemed a breach by the Seller with like legal effect.

28. Independent Contractor. Seller affirms that it is an independent entity and is not, for any purpose whatsoever, an employee or affiliate of Buyer.



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29. Discontinuation. If the goods or services that are the subject of this PO are or will be de-standardized or discontinued within one (1) year after final delivery hereunder, then Seller shall give Buyer no less than 90 days advance written notice of such de-standardization or discontinuance during which time Seller shall accept orders from Buyer for a reasonable quantity of such items even if delivery may occur beyond the discontinuance date.

30. Lien Waivers. Seller shall furnish to Buyer, upon Buyer's request, waivers by Seller and all other persons entitled to assert any lien rights in connection with the performance of this PO.

31. Insurance. During the entire term of this PO, Seller will, at their sole cost and expense, procure and maintain insurance coverage as required by law, including Comprehensive General Liability insurance to cover the value of the PO provided by the Buyer. Such insurance must be effective prior to the commencement of delivery of the goods or performance of services that are subject to this Order.

32. Reliance. Seller represents and warrants that Seller is an expert, fully competent in all phases of the work involved in producing and supporting all goods and performing all services purchased under this PO.

33. Termination. Buyer reserves the right to terminate this PO without penalty to Buyer or recourse by Seller in the event of (a) any change in Seller ownership which in Buyer's sole judgment is of sufficient significance to jeopardize or potentially jeopardize performance hereunder; (b) the filing of a voluntary or involuntary petition for bankruptcy, liquidation, insolvency, or suspension of operations; or (c) Seller (i) fails to deliver the goods or perform the services by the due date specified in the PO or any extension thereof, or (ii) if the Seller fails to make progress in the work so as to endanger performance or (iii) if Seller fails to perform any of the other provisions of this PO in accordance with their terms, and in either of these circumstances does not cure such failure within a period of 10 business days (or such longer period as Buyer may authorize in writing) after receipt of notice from the Buyer specifying such failure. Furthermore, Buyer may, for their convenience, terminate work for goods or services under this PO in whole or in part, at any time by giving notice to Seller in writing. Seller will thereupon immediately stop work on this PO or the terminated portion thereof and notify any subcontractors to do likewise. Seller shall be entitled to (1) reimbursement of their actual costs incurred up to and including the date of termination, such costs to be determined in accordance with recognized accounting principles; and (2) a reasonable profit on the work done prior to termination at a rate not exceeding the rate used in establishing the original purchase price provided, however, that if it appears the Seller would have taken a loss on the PO, then no profit shall be allowed and reimbursement of costs shall be adjusted to reflect the indicated loss. In no event shall Buyer's obligations, as a consequence of termination, exceed the PO price of the portion terminated. At their election, Buyer shall have the right to direct the disposition of any or all work in process and parts and materials included in the Seller's reimbursed costs. Seller will comply with and be reimbursed for reasonable expenses incurred in effecting Buyer's directions. Prior to settlement of any termination claim, Seller grants to Buyer (i) the right to physically inspect any and all inventory included in the claim, and (ii) the right to audit the directly pertinent books, records and documents relating to the costs claimed for reimbursement.

34. Stop Work Order. Buyer may, at any time, by written order, require Seller to stop all or any part of the work called for by this PO for a period of up to ninety (90) days and for any further period to which the Parties agree. Upon receipt of such an order, Seller shall comply with their terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the PO during the period of the work stoppage. After the stop work order is cancelled, Seller shall resume work. An adjustment in the delivery schedule, price, or both shall be made if the stop work order reasonably and directly results in an increase in the time required for performance or the costs of goods sold.

35. Foreign Disclosure. Performance of this PO may involve the use of or access to articles, technical data, or software that are subject to export controls under the International Traffic in Arms Regulations or the Export Administration Regulations. Seller represents and warrants that it is in full compliance with U.S. Immigration laws and regulations and, further, that they will comply with any and all Export laws and regulations and any license(s) issued thereunder. Seller further agrees that they will not give any foreign person access to technical data, software, or defense articles, or provide unauthorized defense services, without the Buyer's prior written consent.

36. Force Majeure. Neither party shall be responsible for delays or failure in performance resulting from acts beyond the reasonable control of such party. Such acts include, but are not limited to, acts of God, strikes, acts of war, epidemics, Government regulations superimposed after the fact, fires, communication line failures, power failures, earthquakes, acts of terrorism, or other disasters.

37. U. S. Government Clauses. If this PO is issued pursuant to, and in support of, a U. S. Government contract then certain acquisition regulations from the Federal Acquisition Regulation ("FAR") and the Department of Defense Federal Acquisition Regulation Supplement ("DFARS") is required by statute to be included by reference in the PO. Without limiting the PO provisions, the FAR and DFARS are incorporated by reference into this PO with the same force and effect as though set forth in full text. Whenever appropriate, references in the incorporated clauses to the "Government" shall mean "Buyer"; and references to "Contractor" shall mean "Seller"; and references to "Contract" shall mean this PO except (A) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Buyer Subcontract Administrator or a duly authorized representative; (B) when access to proprietary financial information or other proprietary data is required; and (C) when specifically modified. Seller further agrees that, to the extent required by this PO, they will incorporate all of the FAR clauses that are incorporated herein by reference, in any lower-tier Subcontract. Seller further covenants that they will impose the terms of this PO, by reference or otherwise, as an obligation on all of their subcontractors to the extent required by this PO. A copy of the U. S. Government clauses will be sent to Seller upon request.