

**SEA BOX, INC.**  
**PURCHASE ORDER TERMS & CONDITIONS**

**1. AGREEMENT:**

These terms and conditions and the other agreements (e.g., supply agreements, service agreements, statements of work, e-mail messages, verbal agreements) if any, pursuant to which this Purchase Order ("PO") was issued contain the entire understanding of the parties with respect to the subject matter of the PO. In the event of any conflict between the terms and conditions contained herein and those in any other applicable written agreement relating to the subject matter of the PO and governing the relationship between Sea Box, Inc. ("Buyer") and Supplier, the conflicting terms and conditions in this PO agreement will govern. No modification, amendment or waiver of any term or condition hereof shall be effective unless set forth in writing signed by Buyer and Supplier. Unless agreed to by Buyer in a writing, Buyer will not be bound to any additional or different terms or conditions hereafter transmitted by Supplier and Buyer will not be bound by its silence, course of dealing, usage of the trade or its acceptance of the goods or services.

**THE SHIPMENT OF ANY GOODS OR THE FURNISHING OF ANY SERVICES (OR DELIVERY OF ANY DELIVERABLE ARISING THEREFROM), SHALL CONSTITUTE ACCEPTANCE BY SUPPLIER OF THE PO AND EACH AND ALL OF THE TERMS AND CONDITIONS STATED HEREIN. IF SUPPLIER OBJECTS TO ANY OF THE TERMS AND CONDITIONS HEREOF, IT SHALL NOTIFY BUYER IN WRITING WITHIN TEN DAYS AFTER ISSUANCE OF THE PO AND WITHHOLD ACCEPTANCE OF THE PO UNTIL SUCH OBJECTION IS SETTLED BY WRITTEN AGREEMENT.**

**2. CHANGES:** Buyer shall have the right, at any time, to make changes, in this Order, by written notice to Seller; and Seller agrees to comply with such changes. If such changes cause a material increase or decrease in Seller's costs or time of performance of this Order, Seller shall notify Buyer immediately and negotiate an adjustment. Seller shall not make substitutions in brand name, grade, or other specification, without prior written approval of Buyer. All communications from Supplier to Buyer, relating to the PO and these terms and conditions, shall be addressed to the Buyer's representative identified on the PO.

**3. PACKING:** No charge shall be made for packing, containers, pallets, or packing materials, unless so stipulated. Seller shall be responsible for safe loading and packing, and must comply with carriers' tariffs. A packing list bearing shippers name, address, contents, and Buyer's purchase order number, must be included in each shipment. Buyer's count will be accepted as final on all shipments. Buyer's purchase order number must be marked on the outside of each package and on shipping tags, invoices and bills of lading.

**4. QUALITY AND WARRANTY:** Seller expressly warrants that all articles, materials, and/or work, furnished hereunder, will conform to plans, drawings, specifications, and other description specified herein; will be new, fit and sufficient for the purpose intended; and will be free from defect in material and workmanship. Failure of any goods and/or work delivered hereunder to meet the quality herein specified or to comply with any of the other terms and conditions hereof shall, at the Buyer's option, relieve Buyer of any obligation to accept such goods and or work and upon any such failure. Buyer may place a purchase order elsewhere for an equal or less quantity of goods and/or work of the same, or substantially equal quality, and charge Seller with any loss so incurred. Failure of Buyer to exercise such option with respect to any portion of this Order shall not constitute a waiver with respect to any undelivered installments. All warranties shall run to Buyer, its successors, assigns and customers. Seller agrees to indemnify Buyer, its successors, assigns and customers, for all liability, damage, loss, cost and expense, including incidental and consequential damages and reasonable attorney's fees, resulting from breach of any or all said warranties, express or implied. Buyer may, at its option, either return for credit or require prompt repair or replacement of any defective or nonconforming article or part thereof, at Seller's expense. Seller agrees, at its expense, to defend or assist in the defense of any action, in any court, against Buyer, its successors, assigns and customers, at Buyer's option, insofar as such action is based upon alleged facts, which amount to a breach of said warranties. Seller agrees to provide Buyer with Certificate of Compliance for purchased items.

**5. INSPECTION:** All articles and/or work ordered hereunder shall be subject to inspection and test by Buyer, at the place of manufacture, destination, or both; and if on Seller's premises, Seller shall furnish, without additional charge, reasonable facilities and assistance for the convenience and safety of persons conducting such inspection and test. Seller shall provide and maintain an inspection system acceptable to Buyer, covering work hereunder. Seller's records of inspection shall be kept complete and available to Buyer, during performance of this Order or longer, if specified. Articles and/or work furnished hereunder shall be subject to final inspection, test and approval by Buyer, after delivery at destination, irrespective of date of payment therefore, it being expressly agreed that payment shall not constitute final acceptance. Buyer will hold rejected goods at Seller's risk and expense for a reasonable time, pending disposition instructions, or otherwise return them at Seller's expense.

**6. QUANTITY AND DELIVERY:** Failure of Seller to deliver in accordance with quantity, time specified, or shipping instructions of Buyer, shall at the Buyer's option, relieve Buyer of any obligation to accept such goods and/or work; and permit Buyer to place a purchase order elsewhere for an equal or less quantity of goods and/or work of the same or substantially equal quality and charge Seller with any loss so incurred. Any failure of Buyer to exercise such option with respect to any portion of this Order shall not constitute a waiver with respect to any undelivered installments. **TIME IS OF THE ESSENCE OF THIS AGREEMENT. SUPPLIER MAY BE SUBJECT TO PAYMENT OFFSET IN THE EVENT OF LATE DELIVERY OR INSTALLATION BASED ON PREVIOUSLY AGREED UPON DELIVERY OR INSTALLATION DATES. SUCH OFFSET IS DEPENDENT ON LIQUIDATED DAMAGES, IF ANY, AND/OR THE BUYER'S CLIENT OFFSET FOR THE RELATED LATE DELIVERY OR INSTALLATION.**

**7. CONTINGENCIES: WITH RESPECT TO PO's FOR SUBCONTRACT, INSTALLATION OR OTHER SUBCONTRACTED WORK, BUYER RESERVES THE RIGHT TO WITHHOLD 10% RETAINAGE FOR ANY SUCH WORK INVOLVING OPEN CLIENT-GENERATED "PUNCH LIST" ITEMS (i.e., OPEN WARRANTY-TYPE WORK RELATED TO SUBCONTRACTED INSTALLATION OR RELATED WORK).** In the event of delays or default in delivery caused by floods, fires, storms or other Acts of God, by war or act of public enemy or civil disturbances, strikes, lockouts, shortages of labor, raw material or production facilities, transportation shortages or failures, or action of any governmental authority or any other contingencies beyond the reasonable control of either party, the parties hereto shall be excused from performance hereunder proportionately as Seller's ability to produce and/or deliver or Buyer's ability to receive and/or use is reduced by such causes or condition, taking into consideration, however, Seller's stock on hand and its total obligation to make deliveries or Buyer's stock on hand and its total obligation to receive deliveries of goods and/or work of the same or substantially equal quality, as the case may be. Whenever an actual or potential cause for delay threatens timely performance of this Contract, Seller shall immediately give notice thereof to Buyer.

**8. PATENTS:** Seller agrees to defend and save harmless Buyer, its successors and assigns, and customers, of any of them from all loss or damage by reason of any and all actions of proceedings charging infringement of any patent, trademark, or copyright, by reason of sale or use of any merchandise and/or work furnished hereunder.

#### **COPYRIGHT; RIGHTS TO INVENTIONS**

A. Buyer will be the exclusive owner of all deliverables created by Supplier in connection with or during the performance of services provided pursuant to a PO, any works based on or derived from such deliverables ("Derivatives"), and any ideas, concepts, inventions or techniques that Supplier may conceive or first reduce to practice in connection with developing the Deliverables ("Deliverable Concepts") (the Deliverables, Derivatives, and Deliverable Concepts are collectively referred to as "Buyer Materials") and all intellectual property rights therein, including patents, copyrights, trade secrets, trademarks, moral rights, and similar rights of any type under the laws of any governmental authority (collectively, "Intellectual Property Rights"). All copyrightable Buyer Materials shall be prepared by Supplier as a "work made for hire" for Buyer, and Buyer shall be considered the author of the Buyer Materials for purposes of copyright. To the extent that the Buyer does not acquire ownership of such copyrights as a work made for hire, and with respect to all other rights, Supplier hereby assigns and agrees to assign upon creation to Buyer all right, title and interest in and to the Buyer Materials and all Intellectual Property Rights therein.

**9. PERFORMANCE OF WORK-LIENS-INSURANCE:** If this Order calls for work to be performed by Seller, all work performed and all materials used in connection therewith, including materials owned by Buyer or Buyer's customers, shall be at the risk and expense of and shall be replaced by Seller, in the event of any damage or destruction thereof, prior to delivery to and acceptance by Buyer. If this Order calls for work to be performed by Seller upon any premises owned or controlled by Buyer and/or Buyer's customer, including but not limited to construction, erection, inspection, delivery, servicing or repairing, Seller will keep the premises and the work free and clear of all mechanics' liens and will furnish Buyer with certificate and waiver, as provided by law. Seller shall also save and hold Buyer, its agents and employees free, harmless and whole, from and against all liability from claims of personal injury, including death or damage to property of others, which may arise from operations in connection with Seller's work for Buyer, whether such operations be by Seller or by any subcontractor or anyone directly or indirectly employed by either of them, and Seller shall at his own expense defend any and all actions based thereon and shall pay all charges of attorneys and all costs and other expenses arising therefrom. Seller shall procure and maintain such insurance as will protect Buyer and Seller under Workers' Compensation Act of the state in which work is performed and amendments thereto. Seller shall procure and maintain such other insurance in connection with the work as Buyer may specify.

#### **A. CERTIFICATE OF INSURANCE**

Supplier shall, at its own expense, maintain with a reputable insurer and provide written certificate(s) of insurance to Buyer for a period of at least two years after the fulfillment of the PO reasonable and customary insurance coverage, including, but not limited to, (1. worker's compensation statutory coverage as required by the laws of the applicable jurisdiction), and (2. commercial general liability insurance, including coverage for product liability in the minimum amount of \$5 million in respect of claims for any losses, costs and expenses arising out of, or relating to Supplier furnishing the goods, deliverables and/or services under the PO). The certificate(s) of insurance will, designate Buyer as "additional insured" under the commercial general liability policy and will include the agreement for the insurer to give Buyer written notice at least 30 days prior to the effective date of any cancellation, lapse or material change in the policy, and will contain a waiver of subrogation in favor of Buyer.

**10. GOVERNMENTAL CODES, LAWS AND REGULATIONS:** Seller warrants that no code, law, regulation or ordinance of the United States, a state or any other governmental authority or agency or any applicable Executive Order has been violated in the manufacture or sale of the items covered by this Order, and warrants that the equipment, supplies, and/or articles covered by this purchase order conform with all such requirements. This statement of compliance includes but is not limited to, areas of:

**A. SAFETY AND HEALTH-** Products supplied, must meet all requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 (OSHA), regulations of United States Department of Interior, Bureau of Mines, and/or similar applicable statutes, including all laws, etc., related to ecology, and more specifically, emissions of any kind. Should the items covered in this purchase order fail to conform to the aforementioned codes, laws, regulations, and/or other requirements, Seller hereby agrees to alter or adjust the same, at his expense, so that they do so conform, or Buyer may return such items to Seller at Seller's expense. Upon the receipt thereof, Seller agrees to reimburse buyer for the full amount paid to Seller for such items, plus any other expenses Buyer may have incurred, including transportation charges. An appropriate material safety data sheet ("MSDS") and labeling, as and if required by law, will precede or accompany each shipment of Supplier. Further, Supplier shall send to Buyer updated MSDS documents and labeling as required by law.

**B. PRICING-**The Seller is in compliance with the Economic Stabilization Act of 1970 and with Executive Order 11615 of August 15, 1971, and all such amending and/or superseding Executive Orders and governmental regulations as may be issued pursuant thereto. Further, the Seller warrants that the amounts invoiced under this purchase order will not exceed the lower of (1) the contract price, or (2) the maximum level established in accordance with the above described Executive Order and/or governmental regulations. The Seller agrees to insert the substance of this clause, including this Paragraph, in all subcontracts for supplies or services issued under this purchase order.

**C. AFFIRMATIVE ACTION PROGRAM, EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION-** Seller agrees to maintain non-segregated facilities and a policy of employment which does not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, handicap or status as a disabled veteran or a veteran of the Vietnam era; and to further comply with all provisions of Executive Order 11246 of September 24, 1965, the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act, including all amendments thereto and regulations thereunder, unless exempted. The equal employment opportunity requirements of 41 C.F.R. 60-1.4(a)(1-7), 41 C.F.R. 60-250.4(a-m), and 41 C.F.R. 60-741.4(a-f) are hereby incorporated by reference. Seller agrees to maintain an ongoing Affirmative Action Program as required by Seller in accordance with its government contracts.

**D. FAIR LABOR STANDARDS-** Seller agrees to conform with all provisions of said Fair Labor Standards Act of 1938 and the Wage and Hour Law. Pursuant to Public Law 95-507, the provision at 48 Code of Federal Regulations 52.219-9, "Utilization of Small Business Concerns" is incorporated into any PO issued pursuant to an agreement with Supplier in excess of \$500,000. This clause is aimed at maximizing opportunities for small and disadvantaged businesses where appropriate, and is intended for Suppliers who offer further subcontracting opportunities. When these conditions exist, Supplier agrees to use best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of the Contract.

**E. ODS LABELING REQUIREMENTS-** The Seller shall accurately label, consistent with the requirements of Subpart E, Part 82 Title 40 of the Code of Federal Regulations, any products manufactured with a controlled substance that are supplied in response to this Order.

**11. TERMINATION:** Buyer may terminate this Order in whole or in part, by written notice to Seller, stating extent and effective date of such termination, requiring Seller, to stop work under this Order and the placement of further orders or subcontracts hereunder, terminate this work under orders or subcontracts outstanding hereunder, and take any necessary actions to protect property in the Seller's possession in which the Buyer and/or Buyer's customer has or may acquire an interest. If the parties cannot by negotiation agree within a reasonable time upon the amount of fair compensation to Seller for such termination, the matter of settlement shall be submitted to arbitration under supervision of the American Arbitration Association.

**12. FINANCIAL RESPONSIBILITY-DEFAULT:** In the event of default or failure of Seller to comply with any of the provisions or requirements hereof, or in event of public notice of impairment of Seller's financial responsibility, such as to give reasonable concern over Seller's ability to fulfill his obligations under Buyer's Order, Buyer shall have the right to terminate and cancel this Order with or without notice and without prejudice to any other rights, elections or remedies Buyer may have, and Buyer shall be relieved from any further obligations to Seller hereunder. The waiver of one default shall not be considered a waiver of any subsequent default.

**13. ASSIGNMENTS:** This order or monies payable hereunder may not be assigned in whole or in part by Seller, without the written consent of Buyer, which consent may be withheld in its sole discretion. The PO and these terms and conditions shall inure to the benefit of and be binding upon Buyer and supplier and their respective successors and permitted assigns; nothing contained herein shall give to any other person any benefit or any legal or equitable right, remedy or claim.

**14. AFFIDAVITS AND CERTIFICATIONS:** Seller agrees to furnish promptly to Buyer all affidavits and certifications as may be required, relating to this Contract of purchase.

**15. INDEMNIFICATION CLAUSE:** The Contractor shall, to the fullest extent permitted by law, also indemnify and hold harmless the Owner, Architect, Architect's Consultants, and all agents or employees of any of them from and against any and all claims, damages, losses and expenses, including but not limited to attorney's fees arising out of or resulting from performance of the work which claim, damage or loss has as a basis for such liability the provisions of Article 10 of the New York State Labor Law. Such obligations shall not be construed so as to negate, abridge or reduce any other rights or obligations of indemnity which would otherwise exist within the terms of any of these Contract Documents or by operation of the laws of this state and amongst the parties to this Contract. 1-2/93

Supplier agrees to indemnify and hold harmless Buyer, (and its and their respective directors, employees and agents) from any losses, liabilities, damages and expenses (including without limitation reasonable counsel fees) arising, directly or indirectly, from: (i) Supplier's breach of any provision hereof, including without limitation the confidentiality obligations and the warranties made herein; (ii) any negligent or wrongful act or omission of Supplier, its employees, consultants or subcontractors; (iii) Supplier's failure to comply with applicable laws and regulations in filling the PO; (iv) any claim charging that Buyer's purchase of goods, services or deliverables under the PO constitutes misappropriation of trade secrets, breach of a confidential relationship, or trademark, trade secret or copyright infringement; and/or (v) any claim charging that any goods or deliverables acquired under the PO, or the use of such goods or deliverables, infringe a third-party's patent anywhere in the world. If the goods or deliverables, or the use of such goods or deliverables, are held to constitute an infringement and their sale or use is enjoined, Supplier shall, at its expense and option, either procure for Buyer and its affiliates the right to continue to use such goods or deliverables, or replace same with an equivalent non-infringing product, or modify same so it becomes an equivalent non-infringing product. This Section will not be construed to limit or exclude any other claims or remedies that Buyer (and its and their respective directors, employees and agents) may assert.