

**ASH VENTURE LLC
TERMS AND CONDITIONS**

1. **CONTRACT:** The order outlined on the Purchase Order together with these terms and conditions will become a binding contract ("Contract") upon receipt by Ash Venture LLC ("Buyer") of a written acceptance duly signed by the company identified as Supplier or Seller on the face of the Purchase Order ("Seller"). Any additional or inconsistent terms or conditions in Seller's acknowledgment of this order are not binding on Buyer unless agreed in writing by Buyer. Shipment of Goods (as defined below) or performance of services that are the subject of the order shall be deemed to be an acceptance by Seller of the terms of this Contract.
2. **DELIVERY:** Time is of the essence. If any Goods are not delivered or services not performed within the time specified in this Contract (or within a reasonable time if no time is so specified), or such Goods or services do not otherwise meet the terms of this Contract, Buyer may, without limiting its other rights or remedies, refuse to accept such Goods or services and cancel this Contract or Buyer may cause the Goods to be shipped by the most expeditious means of transportation, whereupon any additional transportation charges in excess of those which would apply for the usual means of transportation shall be for the account of Seller. The risk of loss or damage in transit shall be upon Seller. Title to the Goods and any portion thereof, shall pass to Buyer at the time of delivery and acceptance at Buyer's site set forth on the Purchase Order or later designated by Buyer in writing. All shipping, handling or other delivery charges are set forth on the Purchase Order or included in the price of the Goods or services and Buyer shall not be obligated to pay any such charges except as expressly set forth on the Purchase Order.
3. **CANCELLATION:** Except as provided herein, this Contract may not be modified or terminated orally, and no modification or termination nor any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom enforced. In the event that conditions arise which in the opinion of Buyer make it inadvisable for Buyer to purchase the Goods or services, Buyer may terminate this Contract at any time upon written notice to Seller. Upon termination, Seller shall only be entitled to receive payment for: (i) Goods for which it has made firm, uncancelable contracts, provided that such Goods are delivered to Buyer; and (ii) any other bona fide obligations assumed by Seller prior to receipt of notice of termination which obligations cannot with all reasonable effort be canceled, provided any benefits accruing from such obligations are assigned to Buyer.
4. **WARRANTIES AND REMEDIES:** Seller expressly warrants that all goods, equipment, supplies, materials, parts, (collectively, "Goods"), services and work covered by this Contract will conform to the specifications, drawings, samples or other description furnished or adopted by Buyer, and will be merchantable, of good design, material and workmanship, fit for the purpose intended and free from defect. Such warranties shall survive inspection, test, acceptance and payment. Seller agrees to indemnify, defend and hold Buyer harmless from all claims, liability, loss, damage and expense, including attorney fees, incurred or sustained by Buyer by reason of any breach of such warranties. All Goods, services and work are subject to inspection by Buyer. Buyer, regardless of when payment is made, and without prejudice arising from any prior delivery and acceptance under this Contract, in addition to its other rights, reserves the right to reject any part of the Goods, services or work which does not conform to this Contract, and receive a corresponding adjustment in the purchase price or require prompt correction or replacement thereof at Seller's expense, including transportation charges, for both any return or new product, and labor costs. Buyer shall have the right to set-off any amount owing from Seller to Buyer against any amount payable at any time by Buyer to Seller. Seller warrants that title to all Goods shall be free and clear of all liens, claims, security interests, encumbrances, or other defects of title. Seller shall not permit or suffer any lien or encumbrance to exist on or against the Goods and materials, or portions thereof, by any person or entity claiming by, through or under Seller, its subcontractors or suppliers. If any such lien or encumbrance is filed or imposed, Seller shall immediately cause such lien to be discharged within five (5) days of its receipt of such lien notification. In the event Seller fails to achieve the foregoing, Buyer will have the right but not the obligation to pay all costs, including attorney's fees and other administrative costs incurred, to obtain a release and discharge of such lien and Seller will be liable for such costs. Seller shall indemnify, defend and hold Buyer harmless from and against all claims arising out of such liens and/or encumbrances. The rights and remedies of Buyer and the warranties of Seller set forth in this Contract shall not be exclusive and are in addition to any other rights, remedies and warranties provided by law or under this Contract. The failure of either party to enforce any rights under this Contract shall not constitute a waiver of such rights or any other rights under this Contract.
5. **BUYER'S PROPERTY:** All equipment or material furnished to Seller by Buyer, and all drawings, blueprints, jigs, fixtures, printing plates, dies, tools or patterns, etc., prepared in connection with this order or charged by Seller to Buyer shall be the property of Buyer and shall be delivered to Buyer at its written request. Any work of intellectual property, including all patents, copyrights, trade secrets and other such rights (collectively, the "Invention") created as a result of this order shall be the sole property of Buyer. Seller hereby assigns to the Buyer any rights it may have or acquire in such Invention, and shall execute (at Buyer's expense) all documents as Buyer reasonably requests to evidence such assignment and/or Buyer's ownership and rights in such Invention, including all applications and documents used to register or enforce in any and all countries Buyer's patent, copyright, trademark, trade secret and other rights pertaining to such Invention. Seller hereby irrevocably designates and appoints Buyer and its duly authorized officers and agents as Seller's agent and attorney in fact to execute and file any such application or documents and to do all other lawfully permitted acts to further the prosecution or enforcement of Buyer's rights in the Invention with the same legal force and effect as if executed by Seller.
6. **PATENTS:** Seller shall indemnify, defend and hold Buyer harmless from and against all claims, liability, loss, damage, or expense, including attorney fees, for infringement or alleged infringement of any patents, or any litigation based thereon, arising out of the sale or use of the Goods furnished pursuant to this Contract; and Seller shall, if requested by Buyer, assume at Seller's own expense the defense of all suits charging any such infringement.

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7. **INDEPENDENT CONTRACTOR:** In the event any Goods ordered hereunder require, in connection with the installation thereof, the services of a contractor engaged by Seller, or a supervisor, engineer or other personnel connected with or employed by Seller, and Seller agrees to furnish same, either with or without charge, such contractor, supervisor, engineer or other personnel in performing such services shall not be deemed to be an agent or employee of Buyer. Seller will be responsible for such parties' performance under this Contract.
8. **INDEMNITY:** Seller agrees to indemnify, defend and hold harmless Buyer from and against any claim, liability, loss, damage, judgment or expense (including attorneys' fees) made or recovered against Buyer occurring by reason of any property damage or any injury, including death to any person (including agents, servants and employees of Buyer and Seller), arising out of or in any way relating to any negligence on the part of Seller, its subcontractors, agents, servants, and employees in the furnishing of any Goods or services contemplated hereunder.
9. **INSURANCE:** Seller agrees to carry liability insurance in amounts and of a type acceptable to Buyer. Seller also agrees to carry Worker's Compensation and Occupational Disease and Employers' Liability insurance in accordance with applicable State and Federal laws acceptable to Buyer. Seller shall furnish two copies of each certificate evidencing the existence of the aforementioned insurance. Each certificate shall be endorsed to provide that Buyer will receive 10 days advance notice prior to cancellation or any material change. The obligation of Seller to carry such insurance shall not limit in any way Seller's liability and its obligation to indemnify Buyer as provided above.
10. **COMPLIANCE WITH LAWS:** Seller warrants that in its performance of this Contract it will comply with all applicable Federal, State and local laws, regulations, rulings and orders.
11. **FAIR LABOR STANDARDS ACT: TO BE APPROVED FOR PAYMENT, ALL INVOICES MUST CARRY THE FOLLOWING CERTIFICATION: "WE HEREBY CERTIFY THAT THESE GOODS WERE PRODUCED IN COMPLIANCE WITH THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED, AND THE REGULATIONS THEREUNDER."**
12. **ASSIGNMENT:** No assignment of this Contract or any portion thereof or any money due or which may become due hereunder shall be made without the prior written consent of Buyer. Any merger, consolidation, transfer of assets, event or transaction resulting (by operation of law or otherwise) in a change of ownership control of Seller or Seller's business shall be deemed to be an assignment for purposes of this Contract. In addition to constituting a default under this Contract, any assignment or attempted assignment made in violation of this section shall be null and void, and the assignee shall acquire no rights thereunder.
13. **APPLICABLE LAWS:** This Contract and the respective rights and obligations of the parties with regard thereto, shall be governed by and construed according to the laws of the State in which the Goods are delivered or the services performed.
14. **EQUAL EMPLOYMENT OPPORTUNITY:** Buyer is an equal opportunity employer. Therefore, the applicable provisions of the Equal Employment Opportunity clause of Executive Order 11246 including Paragraphs 1 through 7 of Section 202 and the implementing Rules and Regulations of the Office of Federal Contract Compliance Programs, the Vietnam Era Veterans Readjustment Assistance Act of 1974, section 503 of the Rehabilitation Act of 1973, and 15 USC §637(a), each as amended, and regulations issued pursuant to each are incorporated herein by specific reference as part of this agreement. Pursuant to Executive Order 11246 and 41 CFR §60-1.8, and by acceptance of this Contract, the **Contractor certifies that it does not and will not maintain any facilities in a segregated manner or permit its employees to perform where segregated facilities are maintained; and agrees that it will obtain a similar commitment from its covered suppliers and subcontractors prior to award of any nonexempt contract.**
15. **OSHA/MSHA:** In addition to the provisions of Paragraphs 4 and 10 above, Seller expressly represents and warrants that all equipment, supplies, materials, parts, services and work covered by this Contract will comply in all respects with all applicable standards, rules and regulations issued under Federal Occupational Safety and Health Act and Mine Safety and Health Act and applicable state law. With respect to the foregoing warranty Buyer shall be entitled to the benefits of the provisions of Paragraph 4 with respect to (I) survival notwithstanding inspection, test, acceptance and payment, and (II) indemnification and defense obligations.
16. **PROPRIETARY INFORMATION:** All plans, drawings, specifications and the subject matter contained therein and all other information given to Seller in connection with this Contract involve valuable property rights of Buyer and shall be held confidential by Seller, shall remain the property of Buyer and shall not be used by Seller for any purposes other than for performance of its obligations under this Contract. Seller agrees that, as far as possible, it will keep confidential the making of this Contract and the terms hereof. Seller agrees not to use for publicity purposes any information with respect to this Contract, including the existence of this Contract and any photographs, drawing and/or materials in connection therewith, without the prior written consent of Buyer.
17. **RIGHT TO AUDIT:** Seller will maintain, for a period of not less than three years after completion, a true and correct set of records pertaining to work performed or services or products delivered under this Contract and all transactions related thereto. Buyer shall have the right to audit, from time to time and upon reasonable notice, so much of Seller's accounts as Buyer reasonably deems is necessary to determine Seller's compliance with this Contract.