



General Purchase Order Terms and Conditions

Agility Fuel Solutions

In the terms and conditions below, Agility Fuel Solutions, LLC. shall be referred to as "AGILITY," the company supplying goods and/or services under this purchase order (the "Purchase Order") shall be referred to as the "Seller," and the goods and/or services described in and provided pursuant to this Purchase Order are referred to as "Goods" or "Services," as the case may be.

1. ACKNOWLEDGEMENT AND ACCEPTANCE

Acceptance of this Purchase Order by Seller constitutes acceptance of all of the terms and conditions stated herein. Acceptance also constitutes acknowledgement that the Seller has read, understands, and will comply with the expectations of AGILITY's Supplier Quality Manual and Paragraph 9 of this General Purchase Order Terms and Conditions. To the extent that any quotation, order acceptance, confirmation, invoice or other document of Seller contains conflicting, differing or additional terms from the terms and conditions herein, the terms and conditions herein will control and all such conflicting, differing or additional terms are rejected by AGILITY, are considered a material alteration hereof, and shall have no effect unless expressly agreed to in writing by AGILITY. Seller's signed acknowledgement of the Purchase Order, or Seller's shipment of Goods, performance of Services, or acceptance of payment for Goods or Services shall conclusively affirm Seller's agreement to these terms and conditions. If this Purchase Order is not signed and returned to AGILITY, either by mail or fax, AGILITY, at its option, may cancel this Purchase Order at any time.

2. FOB; DAMAGE DURING DELIVERY

Delivery of Goods under this Purchase Order shall be by FOB AGILITY Salisbury, North Carolina or another destination as specified by AGILITY and the risk of loss or damage shall remain with Seller until actual delivery to AGILITY. Seller shall be responsible for damages sustained during delivery. Any resulting claims against carriers shall be the responsibility of Seller. Replacement of any damaged Goods shall be the sole responsibility of Seller.

3. PAYMENT TERMS

Unless otherwise indicated in this Purchase Order, AGILITY shall render payment within sixty (60) days of the date of delivery and acceptance of Goods or provision of Services, or from the date of a conforming invoice, whichever is later. In the event AGILITY renders payment within 30 days, AGILITY shall be entitled to a 1.25% discount on the invoiced amount. In the event AGILITY renders payment within 10 days, AGILITY shall be entitled to a 2% discount on the invoiced amount. All invoices for payment shall be in U.S. Dollars and shall include the Purchase Order number, and a summary of the total Purchase Order value, total value of Goods provided or Services performed to date of the invoice, total value of invoicing to date and value of the current invoice. Invoices for payment not including such information may be returned to Seller without payment.

4. PACKAGING

All packages, cases, crates, etc., are to be marked with Seller's name and the applicable AGILITY Purchase Order number. A packing list must accompany each shipment of Goods. AGILITY shall not be responsible or liable for any packaging charges as a result of improper packing, marking or routing and Seller agrees to reimburse AGILITY for all expense incurred by AGILITY as a result of the above, unless otherwise agreed to herein by AGILITY. AGILITY will not be responsible for delays in the payment of invoices if these requirements are not met.

5. DELIVERY

The delivery and performance requirements, manner of delivery and specified dates of this Purchase Order shall be strictly adhered to and shall not be modified without the prior written acceptance of AGILITY. Time is of the essence. In the event of failure to deliver or perform by the dates specified in this Purchase Order, AGILITY reserves the right to cancel such Purchase Order in total or any unexecuted part of such Purchase Order. Goods not shipped in time to meet the delivery requirements and dates under a Purchase Order, at AGILITY's option, shall be delivered at the fastest means available, at the sole expense of Seller. Notwithstanding anything to the contrary herein, no delivery shall be made without at least twenty-four (24) hours advance notice being given by Seller to AGILITY.

6. DELAY

In the event of failure by Seller to deliver any Goods or perform any Services contained in this Purchase Order, other than as a result of acts of God, force majeure, civil commotions, fire, war, perils of the sea, delay in transit, or AGILITY's written request, AGILITY shall have the right to cancel all or any remaining part of this Purchase Order, without payment of compensation, and obtain delivery or performance from other sources. Any and all increased costs and expenses thereby incurred by AGILITY in obtaining such delivery or performance shall be set off against any moneys due or to become due to Seller or shall be recoverable as damages hereunder. If Seller knows or reasonably anticipates an actual or potential labor dispute that is delaying or threatens to delay timely performance of this order, Seller will notify AGILITY in writing immediately and, in any event, at least 180 days in advance of the expiration of any current labor contract.

7. CHANGES

AGILITY may at any time make changes in the drawings, designs or specifications, method of shipping or packing, and the place of delivery of any goods and/or work covered hereby, and Seller agrees to promptly make such changes. Except as otherwise provided herein, this Purchase Order may not be amended, modified, supplemented, cancelled or discharged, except in writing signed by AGILITY and Seller. Except as modified herein, any modification of any Goods sold or Services rendered shall be at Seller's sole cost and expense, unless Seller notifies AGILITY of such modification and AGILITY approves such modification in writing.

8. INDEMNITY

Seller shall protect, indemnify and hold harmless AGILITY, its successors, assigns, affiliates, employees, agents, customers and users of its products and services (collectively, the "Affiliates"), of and from any claim, loss, damage (whether for personal injury, property damage, or direct or consequential damage or economic loss), deficiency, action, demand, judgment, cost or expense (including, without limitation, reasonable attorneys' fees) arising out of or resulting from the Goods sold or Services rendered hereunder, or from any act or omission of Seller, its agents, employees or subcontractors, or which otherwise arises as a result of (i) Seller's performance of its obligations hereunder or (ii) any violation or infringement by Goods or Services provided hereunder of any patent, copyright, trademark, trade dress, and trade secret, or any other contractual right, proprietary right or intellectual property right, of any third party (collectively, any "Claim"). If any Claim should be asserted or action commenced against AGILITY for which AGILITY is entitled to indemnification hereunder, Seller (a) shall, upon AGILITY's demand, promptly undertake the defense of any Claim, employing counsel reasonably satisfactory to AGILITY or (b) agrees that AGILITY, at AGILITY's sole discretion, may elect to defend any Claim on its own behalf. In either case, Seller will, upon demand, pay all reasonable attorneys' fees and other costs or expenses incurred by AGILITY in connection with such defense, any judgment or award resulting from any such claim or action and any settlement paid by AGILITY with Seller's consent, which shall not be withheld unreasonably. This indemnification shall survive delivery of the Goods to or performance of the Services for AGILITY, as the case may be, and any subsequent sale or other transfer of the Goods or Services to a third party. AGILITY's remedies hereunder are cumulative and in addition to those provided by law or any other contract.

9. QUALITY REQUIREMENTS

Seller shall provide and maintain an inspection system, including tests and test reports, acceptable to AGILITY in its reasonable discretion covering the inspection of Goods provided under this Purchase Order, and Seller shall tender to AGILITY for acceptance only such Goods that have been inspected in accordance with such inspection system and that have been determined by Seller to conform to the Purchase Order requirements. However, all Goods provided under this Purchase Order are subject to final inspection and acceptance within a reasonable time after actual delivery and AGILITY shall have the right to reject any defective or nonconforming Goods despite any prior inspection by Seller. Payment for any Goods shall not be deemed an acceptance thereof.

Seller shall provide and maintain a system of inspection and oversight acceptable to AGILITY in its reasonable discretion to ensure all Services provided under this Purchase Order will be diligently performed in accordance with the project description, if applicable, and the applicable industry practices and standards of diligence, care and skill currently recognized in Seller's industry. The adequacy of the performance of the Services provided under this Purchase Order are subject to final inspection within a reasonable time after actual performance and AGILITY shall have the right to terminate any Purchase Order that fails to meet the oversight requirements and minimum quality standards provided in this Paragraph 9.

10. RETURN OF DEFECTIVE GOODS

All Goods supplied under this Purchase Order that do not meet with the approval of AGILITY, that are shipped contrary to Purchase Order instructions, or that are in excess of the quantity or quantities ordered under this Purchase Order, will be returned to Seller or held pending a mutual agreement between AGILITY and Seller regarding their disposition, subject to Seller's risk of loss and sole expense.

11. EXECUTION OF PURCHASE ORDER

Only Purchase Orders sent in writing via fax, mail, courier or e-mail and signed by duly authorized AGILITY personnel shall serve as an official intent of purchase by AGILITY.

12. CHEMICALS & HAZARDOUS SUBSTANCES

All Material Safety Data Sheets required by applicable law (MSDS) (each, a "Data Sheet"), shall accompany all Goods (including, without limitation, any chemicals or hazardous substances) provided under this Purchase Order. In addition, Seller shall provide a copy of each such Data Sheet to AGILITY's Material Services Department. Seller shall maintain a catalog of any and all applicable Data Sheets that are provided in connection with Seller's performance of work under this Purchase Order at an AGILITY site. Seller will furnish all appropriate shipping certification and instructions for shipping, safety, handling, exposure, and disposal (including without limitation material data safety sheets) in a form understandable by AGILITY's non-technical personnel and in sufficient detail to identify all action that the user must take concerning the material.

13. COMPLIANCE WITH LAWS

Seller agrees to comply with all federal, state and local laws, rules and regulations, including, but not limited to, Executive Order 11246, the Equal Employment Opportunity Act and any amendments thereto, pertaining to nondiscrimination in employment, the Occupational Safety and Health Act of 1970, the Fair Labor Standards Act, any laws, regulations and executive orders related thereto, and any other applicable federal, state or local law or regulation. Within the framework of its commercial dealings with AGILITY, Seller is obligated to desist from all practices which may lead to penal liability due to fraud or embezzlement, insolvency crimes, crimes in violation of competition, guaranteeing advantages, bribery, acceptance of bribes or other corruption crimes on the part of persons employed by Seller or other third parties. In the event of violation of the above, AGILITY has the right to immediately withdraw from or terminate all legal transactions existing with Seller and the right to cancel all negotiations without further liability. Seller shall, in accordance with Paragraph 8, indemnify and hold AGILITY harmless against any liability arising out of or resulting from Seller's failure to so comply. Upon request, Seller shall supply AGILITY with copies of compliance reports and any other information necessary to demonstrate compliance with this Paragraph 13.

14. WARRANTY

Seller warrants it is a merchant as defined in the Uniform Commercial Code. Seller warrants that all Goods delivered hereunder, if any, will (i) be merchantable, (ii) be free from defect of design, material or workmanship, (iii) conform strictly to the specifications, descriptions, drawings, or sample specified or furnished to AGILITY, (iv) conform to all prevailing industry regulation standards and applicable codes (v) be free from security interests, liens or encumbrances, (vi) be fit and safe for their intended purpose, and (vii) be safe and appropriate for the purpose for which such Goods or Services are normally used. Seller warrants that all Services rendered hereunder, if any, will be performed in a professional and workmanlike manner in accordance with the applicable professional industry standards of diligence, care and skill currently recognized in Seller's industry. The warranties contained herein shall begin at the time of performance or, if applicable, receipt at the delivery location or installation, whichever is later, unless a later time is specified in the manufacturer policy. Such warranties shall survive for greater of (a) one (1) year, (b) the standard warranty term provided by Seller to its customers, or (c) as provided under applicable law. Notwithstanding anything to the contrary contained herein, the foregoing shall not limit any additional warranty or warranty period otherwise agreed to by the parties in writing. The warranties contained herein shall survive any inspection, delivery, performance, acceptance, or payment by AGILITY of the Goods or Services. AGILITY may, at its option, return for credit or require prompt replacement or correction of any of the Goods or Services which do not conform to the foregoing warranties at Seller's expense. In the event that Seller fails to make such replacement or correction, AGILITY shall have the right to obtain such replacement or correction from other sources. Any and all increased costs and expenses thereby incurred by AGILITY in obtaining such replacement or correction shall be set off against any moneys due or to become due to Seller or shall be recoverable as damages hereunder. Corrected or replaced Goods or Services shall be subject to the terms and conditions of this Purchase Order in the same manner and to the same extent as Goods or Services originally delivered hereunder. If part of the Goods to be delivered or Services to be performed hereunder are defective or nonconforming, AGILITY may cancel any unshipped portion of the Goods or cancel any unperformed Services, as the case may be, covered by the Purchase Order. The rights of AGILITY provided in this Paragraph 14 shall be in addition to any other rights provided by law, this Purchase Order, or any other contract.

15. INDEPENDENT STATUS

Seller acknowledges that it is an independent business acting as an independent contractor. Though Seller may perform Services, no agent, representative or employee of Seller shall be or be considered an agent or employee of AGILITY.

16. BANKRUPTCY

In the event of any proceedings, voluntary or involuntary, in bankruptcy by or against Seller, the inability of Seller to meet its debts as they become due, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then AGILITY shall be entitled, at its sole option, to cancel any unfulfilled part of this Purchase Order without any liability whatsoever.

17. INTELLECTUAL PROPERTY

Seller warrants that the goods or services sold will not infringe any U.S. or foreign patent and/or any third party intellectual property right, and Seller will, at its expense, defend, indemnify and save AGILITY harmless from and against any loss, damage, expense or liability, including attorney fees and costs, that results from an infringement or alleged infringement. Seller expressly waives any claim against AGILITY that an infringement arose out of compliance with AGILITY's specification. If any of the goods or services furnished to AGILITY become the subject of an alleged infringement of a patent or third party intellectual property right, Seller shall, at its expense, either procure for AGILITY the right to continue using the goods or services; replace or modify them so that they are non-infringing; or refund AGILITY's full purchase price. Seller agrees that parts manufactured based on AGILITY's drawings and/or specifications may not be used for Seller's own use or sold to third parties without AGILITY'S express written authorization. Seller agrees that AGILITY or AGILITY's subcontractor has the right to repair, reconstruct, or rebuild goods delivered under this contract without payment of any royalty to Seller.

18. ASSIGNMENT

Seller shall not delegate any duties, nor assign any rights or claims under this Purchase Order, or for the breach hereof, without the prior written consent of AGILITY. Any such attempted delegation or assignment shall be void. Any change of control of Seller shall be deemed an assignment hereunder.

19. PUBLICITY

Seller may use its business relationship with AGILITY for advertising purposes only with the prior written consent of AGILITY. Seller will not place its or any third party's trademark or designation on a part if it bears a trademark of AGILITY or its affiliate, an identifying mark specified by AGILITY, or if the part is based on AGILITY's design. Seller will sell such marked parts only to AGILITY and will not sell them to third parties without AGILITY's prior written consent.

20. SET-OFF AND COUNTERCLAIMS

All claims for moneys due or to become due from AGILITY shall be subject to deduction by AGILITY for any setoff or counterclaim arising out of this or any other of AGILITY's purchases from Seller.

21. RECALL/REPAIR CAMPAIGN

If Seller's products or services create or contribute to a vehicle or component repair campaign or safety recall due to a vehicle or component defect, or non-compliance with the National Traffic and Motor Vehicle Safety Act, as revised, Seller shall pay the cost of repair or recall and correction, including labor and administrative costs, based upon Seller's proportionate responsibility for the defect or non-compliance. Either AGILITY or Seller in its sole discretion may notify the National Highway Traffic Safety Administration of a safety or noncompliance issue and/or initiate a recall. This section does not limit Seller's liability under other provisions of this purchase order. Seller agrees to comply with all requirements of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act and its implementing regulations. At its own expense, Seller will provide information in such detail and according to a schedule specified by AGILITY to enable AGILITY to fulfill its obligations under the TREAD act.

22. TERMINATION

AGILITY shall have no liability with respect to goods or components procured, or work done, or supplies partially fabricated, in excess of authority contained in this order or in any shipment release issued to Seller pursuant hereto. If Seller (i) fails to deliver goods or perform services at the time specified, or (ii) fails to perform, repudiates or breaches any of the terms of this agreement, including Seller's warranties, and does not cure such breach within a period of 10 days after receiving written notice from AGILITY specifying the breach, or (iii) becomes insolvent, makes an assignment in favor of creditors, or enters bankruptcy or dissolution procedures, AGILITY may cancel the whole or any part of this order without any liability, except for payment due for goods and services delivered and accepted. Upon such termination and written notice to Seller, AGILITY will have the right to take title to and possession of all or any part of such work performed by Seller under this order. This Purchase Order, or any portion hereof, may be terminated by AGILITY at any time with or without cause. If AGILITY terminates without cause, AGILITY will compensate Seller for the actual and reasonable expenses incurred by Seller for work in process requested by AGILITY up to and including the date of termination, provided such expenses do not exceed the agreed upon prices in this Purchase Order.

23. RELATIONSHIP

Neither Seller nor its subcontractors, or the employees or agents of any of them, shall be deemed to be AGILITY's employees, or agents. Seller and its subcontractors are independent contractors and Seller shall be wholly responsible for withholding or payment of all federal, state and local income and other payroll taxes with respect to its employees, including contributions from them and as required by law.

24. TAXES

Seller is responsible for payment to the proper taxing authority of all sales, use and similar taxes. Federal excise taxes charged to AGILITY will be separately stated or indicated as being included in the unit price. Seller agrees that no tax for which an exemption exists will be included in the price and will not be subsequently charged. Seller agrees to pay any and all personal property and/or ad valorem taxes assessed or levied against any property placed with Seller by AGILITY for the purpose of fulfilling this purchase order.

25. CONFIDENTIALITY

Seller will neither use any Confidential Information (as defined below) for any purpose other than in performing its duties hereunder nor disclose the existence of this Purchase Order or any information contained herein without the express written consent of AGILITY. "Confidential Information" includes, but is not limited to, all designs, articles and other proprietary information developed by AGILITY, supplied to AGILITY or made according to AGILITY's direction.

26. LIMITATION OF LIABILITY

To the extent permitted by law, in no event will AGILITY (including any subsidiaries of AGILITY or other related entities) be liable for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages relating to this Purchase Order.

27. INSURANCE

Seller shall maintain in effect, at its expense, insurance of such types and in such amounts as is commercially reasonable in connection with the conduct of its business, including, without limitation, insurance coverage for its liability and indemnity obligations hereunder. Such policies will name AGILITY as an additional insured and contain endorsements stating that the policies are primary and not excess over or contributory with any other valid, applicable, and collectible insurance in force for AGILITY. AGILITY may require Seller to furnish evidence of the foregoing insurance but failure to comply with these insurance requirements will not relieve Seller of its liability and obligation under this clause.

28. SEVERABILITY

If any provision of this Purchase Order shall under any circumstances be deemed invalid or inoperative, this Purchase Order shall be construed with the invalid or inoperative provision deleted, and the rights and obligations of the parties shall be construed and enforced accordingly.

29. REMEDIES

The rights and remedies reserved in this order to AGILITY are cumulative and in addition to any other or further rights and remedies available at law or in equity. Without limiting the foregoing, if any goods fail to conform to the warranties provided by Seller, AGILITY shall notify Seller and Seller shall, if requested by AGILITY, reimburse AGILITY for any incidental and consequential damages caused by the nonconforming goods, including costs, expenses and losses incurred by AGILITY, including, without limitation, losses incurred (a) in inspecting, sorting, repairing or replacing nonconforming goods; (b) resulting from production interruptions, (c) conducting recall campaigns or other corrective service actions, and (d) claims for personal injury (including death) or property damage caused by such nonconforming goods. No waiver of any breach of any provision of this order will constitute a waiver of any other breach or a waiver of such provision. Seller agrees that if Seller breaches its obligations hereunder, AGILITY shall be entitled to all available equitable and legal remedies, including without limitation immediate injunctive relief.

30. NONWAIVER

AGILITY's failure to enforce any provisions of this Purchase Order or rights hereunder shall not operate as a waiver of such provisions or rights and the same shall remain in full force and effect for the duration of this Purchase Order.

31. GOVERNING LAW

This Purchase Order and the acceptance of it shall be a contract made in the State of California and governed by the laws thereof, without giving effect to conflicts of law principles, and the United Nations Convention on Contracts for the International Sale of Goods shall not apply to such contract. Any actions or proceedings by Seller against AGILITY may be brought by Seller only in federal or state courts located in Orange County, California.

32. UPDATES; APPLICABILITY

These General Purchase Order Terms and Conditions may be updated from time to time by AGILITY. Such updated General Purchase Order Terms and Conditions will be available at <http://www.agilityfuelsystems.com/terms-and-conditions.html>. The General Purchase Order Terms and Conditions applicable to the parts purchased by AGILITY shall be the updated General Purchase Order Terms and Conditions applicable on the date of payment by AGILITY.