

## **Purchase Order Terms and Conditions**

1. **Parties' Agreement.** Cashman Equipment Company, LLC dba Empire Southwest ("Cashman") is issuing a Purchase Order to the vendor identified thereon ("Vendor") to purchase certain goods and/or services as more particularly described thereon (the "G&S"). These Purchase Order Terms and Conditions ("Terms") govern, and are an essential part of, the Purchase Order between Cashman and Vendor. For ease of reference, the Purchase Order and the Terms are collectively referred to herein as the "PO." Cashman and its parent, subsidiaries, affiliates, successors, assigns, owners, officers, directors, employees, and agents are referred to collectively herein as the "Cashman Parties."
2. **Entire Agreement.** The PO governs the rights and liabilities of Cashman and Vendor and is the sole and exclusive agreement of the parties with respect to the G&S (unless a separate agreement relating specifically to the G&S is executed by a vice president of Cashman). Cashman hereby rejects the terms of any document submitted by Vendor; these Terms may not be modified by any document issued by Vendor, any industry standard, or by the parties' course of dealing, course of performance, custom, or usage, but only by an agreement signed by a vice president of Cashman. These Terms shall apply even where Cashman accepts delivery of G&S without reservation, having knowledge of conflicting or deviating Vendor terms and conditions. Acknowledgement, acceptance, shipment, or performance of any part of the PO by Vendor constitutes acceptance of the entire PO, including these Terms, exactly as written.
3. **Payment.** If the PO is for procurement of ongoing G&S from Vendor over a period of time, these Terms shall apply to all such G&S, and invoices for such G&S shall be submitted to Cashman not more frequently than once every thirty days. Payment terms for undisputed amounts are net thirty days from Cashman's acceptance of the G&S or receipt of invoice, whichever is later. Cashman shall have the right to terminate the PO, or any portion thereof, without cause upon written notice. The applicable PO number must appear on all invoices, packages and correspondence pertaining to the PO. Whether or not separately stated on Vendor's invoice or on the PO, Vendor shall be responsible for remitting to the appropriate taxing authority any state or local transaction privilege tax and/or sales tax related to the G&S provided by Vendor. Any other federal, state, or local taxes of any type assessed on Vendor due to the provision of the G&S shall be the sole responsibility of Vendor.
4. **Delivery.** Vendor must pack all goods delivered pursuant to the PO in accordance with good commercial practices. Unless otherwise specifically provided on the PO, Vendor must ship goods in the most cost-effective manner, FOB Cashman's designated delivery point. Time is of the essence with respect to delivery or completion of the G&S, as applicable. If the G&S are not delivered or completed by the date stated in the PO, Cashman will have all rights and remedies available at law and in equity.
5. **Conforming Goods and Services.** All G&S are subject to inspection, testing, approval, and acceptance by Cashman within a reasonable time after delivery or performance. Cashman's payment of an invoice shall not constitute acceptance of the applicable G&S, and Cashman's inspection, testing, approval, acceptance, or use of the G&S shall not affect Vendor's obligations and warranties herein. Cashman may reject any G&S that are, in Cashman's judgment, defective

and/or do not conform to the terms or specifications of the PO. If G&S are non-conforming, Cashman will have all rights and remedies available at law and in equity.

6. Changes. Vendor shall not invoice Cashman for any charges in excess of those set forth on the PO. Cashman may request changes, additions, or deletions to the PO by notice to Vendor. If such changes, additions or deletions would require additional charges or alter the delivery or completion schedule, Vendor must obtain prior written approval from Cashman before proceeding with the changes or Cashman will have no obligation to pay such additional charges or accept such schedule alterations. Cashman shall have the right to audit Vendor records related to the G&S Vendor is providing to Cashman.

7. Warranties. Vendor warrants to the Cashman Parties and the Cashman Parties' clients (if applicable) that all G&S will: (a) conform to the terms of the PO and all applicable samples, drawings, standards, specifications, performance criteria and other descriptions; (b) be merchantable, safe and appropriate for the purpose for which such G&S are normally used; (c) not infringe upon the rights of any third party; (d) comply with all applicable federal, state and local laws and regulations, including, the requirements of the U.S. Foreign Corrupt Practices Act of 1977 (FCPA); (e) not be subject to, or give rise to, any lien, encumbrance, security interest, or third party claim (Vendor must deliver written lien releases if requested by Cashman); (f) be new (unless otherwise noted on the PO); and (g) with respect to services, be performed diligently, in a good and workmanlike manner in accordance with the highest standards in Vendor's trade or industry. Vendor further warrants that it will comply with all applicable laws, regulations, and ordinances, and Vendor warrants that it will maintain in effect all the licenses, permissions, authorizations, consents, and permits needed to perform the G&S and conduct its obligations under the PO.

8. Liens. Vendor must immediately notify Cashman of any lien or potential lien relating to the G&S (including, but not limited to, statutory, voluntary or consensual, involuntary, attachment, judgment, mechanic's or materialman's, tax, purchase-money, or environmental liens). Vendor agrees that it will take all actions to prevent and immediately remove any lien relating to the G&S or fixed upon property owned by the Cashman Parties relating to, or arising out of, the G&S, including removal through a lien release bond if available. Should Cashman incur any fee or cost (including attorneys' fees) relating to such a lien or potential lien, Vendor will reimburse Cashman in full upon request.

9. Insurance.

(a) Before commencing work for Cashman, Vendor must obtain at its sole expense, and must maintain in effect: workers' compensation insurance (in accordance with applicable law) and employer's liability insurance (not less than \$1,000,000 per person, per accident); automobile liability insurance (owned, non-owned and hired, with a combined single limit of not less than \$1,000,000); and general liability insurance (not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate), all in accordance with Cashman standard insurance requirements. In addition, if the G&S involves architectural, engineering, design, or professional services, Vendor must obtain at its sole expense, and must maintain in effect, professional liability or errors and omissions coverage (not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate). Further, if the G&S involves construction or remodeling work, or if the G&S involves the

installation of equipment or fixtures, Vendor must obtain at its sole expense, and must maintain in effect, builders risk insurance or course of construction coverage, for the entire length of the G&S, written on an all-risk, replacement-cost value, with limits equal to or exceeding the completed value of the project.

(b) All insurance requirements provided in these Terms represent minimum scope and limits. If additional insurance or coverage are needed to insure against risks related to or arising out of the G&S, Vendor must obtain at its sole expense, and must maintain in effect, all insurance and coverages necessary to insure against such risks. Any excess or umbrella policy used to meet the requirements of this paragraph must be written on a follow form basis.

(c) Cashman's standard insurance requirements do not limit or qualify the liabilities, obligations, warranties or indemnities of Vendor hereunder. Vendor's required policies shall be primary, and any insurance maintained by Cashman shall be excess and non-contributory. Vendor must provide an insurance certificate to Cashman evidencing all of the foregoing before commencing work for Cashman. Additionally, Vendor's required policies must be endorsed to name Cashman Parties as additional insureds and to include waivers of subrogation, and such endorsements shall be provided to Cashman along with the insurance certificate.

10. Indemnity, Liability, and Waiver. Vendor shall defend, indemnify, and hold harmless the Cashman Parties for, from and against all claims, liabilities, losses, demands, penalties, forfeitures, suits, damages, judgments, costs and expenses of any kind (including attorneys' fees, expert fees, and costs) that are caused by, arise out of, or relate to the PO, the G&S or the Vendor's actions or inactions related to the same, including any failure to comply with any law, regulation, tax, or ordinance and including losses related to the death or injury of any person(s) or damage to or destruction of, any real or personal property. Vendor's obligations survive the completion of the G&S or termination of the PO. In no event shall Cashman be liable for any special, incidental, indirect, punitive, exemplary or consequential damages, regardless of whether or not Cashman was advised of the possibility of such damages. Vendor hereby waives and releases the Cashman Parties, from any and all liability, claims, losses, damages, or causes of action arising in any way in connection with Vendor's use or occupation of Cashman's premises, property, facilities, or equipment, including without limitation any personal injury of Vendor's agents, employees, or subcontractors or any loss or damage to Vendor's personal property, absent the gross negligence or willful misconduct of Cashman.

11. Remedies. In the event of any breach of the PO by Vendor, Cashman shall have all rights and remedies available at law and in equity in addition to any rights or remedies specifically described herein, including but not limited to one or more of the following: (a) Cashman may reject non-conforming G&S, and Vendor shall refund the price of such non-conforming G&S and all costs related thereto; (b) Cashman may require Vendor to replace or correct any such non-conforming G&S at no additional cost to Cashman; (c) Cashman may replace any non-conforming G&S from another source, and/or take corrective action with respect to any non-conforming G&S, and obtain reimbursement from Vendor for all costs incurred by Cashman in connection therewith; and (d) Cashman may terminate the PO.

12. Confidentiality. All information Cashman provides to Vendor that is not available to the general public, all specifications and documents prepared by Vendor in connection with the PO,

and all other non-public information that Vendor obtains as a result of the PO constitute confidential information of Cashman. Without prior written consent by a vice president of Cashman, Vendor shall not (a) disclose or use Cashman's confidential information for any purpose other than performing the PO; (b) announce, publicize or discuss with third parties the subject matter of the PO; or (c) include Cashman's name or trademarks in any marketing materials. All specifications, drawings, schematics, technical information, data, tools, test equipment, and other materials furnished by Cashman to Vendor shall remain Cashman's property. All specifications, drawings, schematics, technical information, data, tools, test equipment, goods and other materials, and work product and intellectual property rights in all of the foregoing, generated in whole or in part by Vendor in relation to the PO ("Property Rights"), will be considered work for hire and will constitute Cashman's sole and exclusive property, whether delivered by Vendor to Cashman or not, and shall be provided to Cashman immediately upon request. If any Property Rights are not considered works for hire owned by Cashman by operation of law, Vendor hereby assigns all right, title, and interest in such Property Rights, including, but not limited to, all copyrights in such Property Rights, to Cashman.

**13. Equal Opportunity.** Unless exempt, Vendor, this contractor and all subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and they prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment qualified individuals without regard to race, color, religion, sex, sexual orientation, gender identification, national origin, protected veteran status or disability. If applicable, the contractor and subcontractor shall also abide by the requirements 41 CFR § 61-300.10 regarding veterans' employment reports and 29 CFR Part 471, Appendix A to Subpart A regarding posting a notice of employee rights.

**14. Policy Compliance.** Vendor must abide by Cashman's rules and policies while on Cashman's premises and while fulfilling its obligations under the PO, including, but not limited to, all rules and policies related to safety, health, and hazardous materials. Prior to bringing any hazardous materials onto Cashman's premises, Vendor shall provide written notice to Cashman and provide Cashman with material safety data sheets and any other documentation reasonably requested by Cashman.

**15. General Provisions.** The PO is to be construed and interpreted in accordance with Arizona law, without giving effect to its conflict of law provisions. Vendor irrevocably consents to exclusive jurisdiction and venue in Maricopa County, Arizona. The PO shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted. Vendor shall not assign or subcontract the PO, or any portion thereof, without the prior written approval of a vice president of Cashman, and such approval may be withheld in Cashman's sole and absolute discretion. Any attempted assignment or subcontract in violation of the foregoing shall be void and of no force and effect. If Cashman authorizes Vendor to subcontract any part of the G&S, Vendor is responsible for all of the subcontractor's acts, errors, and omissions in performing work relating to the G&S. Vendor acknowledges and agrees that it is an independent contractor with respect to Cashman and that

its employees, representatives and any permitted subcontractors are not agents or employees of Cashman, regardless of where they perform services. If any provision of the PO is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect the validity of the remaining provisions. If Cashman fails to insist on performance of any term or condition, or fails to exercise any right or privilege hereunder, such failure shall not constitute a waiver of such term, condition, right or privilege. No provision of the PO may be waived or modified, except in a writing signed by a vice president of Cashman. The PO is non-exclusive; Cashman reserves the right to obtain like goods and/or services from other sources.

Cashman Equipment Company, LLC dba Empire Southwest is an EEO/Affirmative Action Employer. Cashman is committed to working with and providing reasonable accommodation to individuals with disabilities. If, because of a medical condition or disability, you need a reasonable accommodation for any part of the employment process, please e-mail [greatjobs@empire-cat.com](mailto:greatjobs@empire-cat.com) or call (480) 633-5440 and let us know the nature of your request and your contact information.

Rev. 3/13/24