

**CONTROL SOUTHERN, INC.  
PURCHASE ORDER TERMS AND CONDITIONS**

**DEFINITIONS**

As used herein "Buyer" means Control Southern, Inc., "Buyer's Authorized Procurement Representative" means the person or persons authorized by Buyer to alter, modify or change the provisions of this Order. "Seller" means the party with whom Buyer is contracting and includes any reference to "vendor," "subcontractor," "contractor," or "supplier." "Purchase Order" ("Order") means this instrument, including all documents, exhibits and attachments referenced herein.

**1. ACCEPTANCE**

Seller has read and understands this Order to be the exclusive agreement between Buyer and Seller. Seller's written acceptance or acknowledgment of this Order, or Seller's shipment of goods, performance of services or commencement of work under this Order shall be only upon the terms and conditions contained herein. In no event shall payment or transfer of title constitute acceptance. Any and all terms and conditions proposed by Seller which are different from or in addition to the terms and conditions of Buyer's Purchase Order are hereby deemed to be material alterations and shall not become a part of this Order or binding upon Buyer. Any modifications or changes to this Order shall be made only in accordance with Sections 5 and 26.

**2. SHIPPING, BILLING and PAYMENT**

Seller agrees: (a) to properly pack, mark and ship goods in accordance with the requirements of Buyer and involved carriers in a manner to secure the lowest transportation cost and meet delivery times; (b) to route shipments in accordance with instructions from Buyer; (c) to make no charges for handling, packaging, storage, transportation or drayage of goods unless otherwise stated in this Order; (d) to provide with each shipment packing slips with Buyer's Order number marked thereon; (e) to properly mark each package with this Order number, the factory, plant and dock number, and, where multiple packages comprise a single shipment, to consecutively number each package; and (f) to promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with Buyer's instructions and carrier's requirements. The packaging, labeling and shipping of all materials, including HAZARDOUS SUBSTANCES, DANGEROUS OR EXPLOSIVE MATERIALS, must conform to all applicable international, federal, state and local laws and regulations. The marks on each package and identification of the goods on packing slips, bills of lading and invoices shall be sufficient to enable Buyer to easily identify the goods purchased.

Seller further agrees: (a) to promptly render, after delivery of goods or performance of services, correct and complete invoices to Buyer; and (b) to accept payment by check or, at Buyer's discretion, other cash equivalent (including electronic transfer of funds). Payment for material and/or services and provision of required documentation, shall be in accordance with the payment terms of this Order. The time for payment shall not begin until correct and complete invoices are received, and Seller's cash discount privileges to Buyer shall be extended until such time as payment is due. Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may direct, of the absence of any liens, encumbrances and claims on the goods or services for which this Order applies.

**3. DELIVERY SCHEDULES**

(a) Time is of the essence in the performance of this Order. Seller shall make deliveries at such times and places and of such items and quantities as specified in the Buyer's delivery schedules. Strict adherence to Buyer's stated schedules is a material condition of this Order. Seller shall not, unless otherwise agreed in writing by Buyer, manufacture or procure materials to which this Order applies in excess of the amount described in this Order or the delivery schedules, or in advance of the time necessary to meet Buyer's delivery schedule. Further, Buyer shall have no obligation to pay for goods delivered to Buyer which are in excess or delivered in advance of Buyer's delivery schedule. Buyer may return such excess goods at Seller's risk, and all transportation charges, both to and from the original destination, shall be paid by Seller. Buyer reserves the right to change the rate of scheduled shipments (increase or decrease quantity) or direct the temporary suspension of scheduled shipments, neither of which shall be a breach or repudiation of this Order nor entitle Seller to a modification of the price for goods or services covered by this Order. For Orders where quantities and/or delivery schedules are not specified, Seller shall deliver goods in such quantities and at such times as Buyer may direct in subsequent releases.

(b) Unless otherwise provided for on the face hereof, goods covered by this Order shall be delivered to Buyer FOB Seller's facility at the address specified on the face hereof, and title to goods covered hereunder shall pass to Buyer upon delivery of such goods at Buyer's designated facility. Seller shall be responsible for all risk of loss or damage until such passage of title.

(c) If at any time it appears to Seller that any delivery schedule cannot be met, Seller shall notify Buyer as soon as possible as to the causes thereof, the action being taken to mitigate such cause of non-delivery, when on-schedule status will be regained. Seller shall, at its expense, take whatever reasonable action is necessary, with or without Buyer's request, to meet such schedules as set forth herein or to recover to the maximum extent possible any delay in meeting such schedules. Such reasonable action by Seller shall include, but not be limited to, expedited shipment.

**4. PREMIUM SHIPMENTS**

If Seller's acts or omissions result in Seller's failure to meet Buyer's delivery requirements, Buyer reserves the right to require a more expeditious method of shipment for the goods than the shipment method originally specified by Buyer. In the event Buyer exercises this right, Seller shall, at Buyer's option, (a) promptly reimburse Buyer the difference in cost between the more expeditious method of shipment and the original method of shipment, (b) allow Buyer to reduce its payment of Seller's invoices by such difference, or (c) ship the goods as expeditiously as possible at Seller's expense and invoice Buyer for the amount which Buyer would have paid for normal shipment.

**5. CHANGES**

Buyer reserves the right at any time to direct Seller to make changes, in any one or more of the following: (a) drawings, designs or specifications, (b) place of inspection, delivery or acceptance, (c) testing or quality control

Seller agrees to promptly make such changes and other changes as provided for in Section 3 and elsewhere, and avoid unnecessary related costs. Any difference in price or time of performance resulting from such changes shall be equitably adjusted by Buyer after receipt of documentation in such form and detail as Buyer may direct. This Order may only be changed or modified by a Purchase Order Amendment issued by Buyer. Any attempted oral modifications to this Order shall not be binding upon Buyer.

Seller acknowledges and agrees that certain changes in delivery schedule are market dependent and are normal and anticipated in the course of business. No adjustment of any kind shall be afforded to Seller with respect to changes made necessary by reason of defects or Seller's inability to meet stated specification requirements of any item for which Seller would be liable under the terms of this Order.

**6. NON-CONFORMING GOODS**

(a) Buyer may reject and hold at Seller's risk and expense subject to Seller's reasonable disposal instructions, goods which do not conform to applicable specifications, drawings, samples or descriptions or which are defective in material, workmanship or design or otherwise fail to meet the warranties contained in Section 8. To the extent Buyer rejects goods as non-conforming, the quantities of such goods under this Order will automatically be reduced by the number of non-conforming items unless Buyer notifies Seller in writing otherwise. Seller shall not replace quantities so reduced without a new Order or schedule from Buyer, and Buyer is not responsible for payment to Seller for rejected non-conforming goods. Moreover, payment by Buyer for non-conforming goods shall not constitute an acceptance thereof, limit or impair Buyer's right to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects.

(b) Without limiting any other rights Buyer may have, Buyer may, upon rejection and at its option, require Seller (1) to repair or replace at Seller's expense any goods or items which fail to meet the requirements of applicable specifications, designs, drawings, samples, descriptions or other requirements of this Order; or (2) to refund the price which may have been paid by Buyer for any such goods.

**7. FORCE MAJEURE**

Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence not reasonably foreseeable and beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and

slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party or the other party within ten (10) days. During the period of such delay or failure to perform by Seller and after prompt notice from Seller to Buyer of the occurrence of such an event, Buyer, at its option, may purchase goods from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, or have Seller provide the goods from other sources in quantities and at times requested by Buyer and at the price set forth in this Order. If requested by the Buyer, Seller shall, within ten (10) days of such request, provide adequate assurances that the delay shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days, Buyer may immediately cancel this Order without liability.

**8. WARRANTY**

Seller expressly warrants that all goods or services covered by this Order will conform to the specifications, drawings, samples, examples, trials, demonstrations, representations, or descriptions furnished to or by Buyer, and will be merchantable, of good material and workmanship and free from defect. Seller further expressly warrants that it has good title to the goods, raw materials, and parts covered by this Order, free and clear of all liens or security interests. Seller expressly warrants that all goods and services provided hereunder shall not violate or infringe any patent, copyright, trademark, or proprietary interest. In addition, Seller acknowledges that Seller knows of Buyer's intended use and expressly warrants that all goods covered by this Order which have been selected, designed, manufactured, or assembled by Seller, based upon Buyer's stated use, will be fit and sufficient for the particular purposes intended by Buyer.

**9. CANCELLATION FOR DEFAULT**

Seller reserves the right to cancel this Order, in whole or in part, without liability to Buyer, if Seller (a) refuses or fails to deliver the goods or services or any installment thereof strictly within the time specified herein or any extension thereof granted by Buyer in writing, (b) fails to comply strictly with any provision of or repudiates this Order or so fails to make progress as to endanger performance of this Order in accordance with its terms, or (c) suspends its business or becomes insolvent or subject to any law relating to bankruptcy, insolvency or relief of debtors. If Buyer requests adequate assurance of performance, Seller shall provide same within ten (10) business days.

**10. TERMINATION FOR CONVENIENCE**

Buyer may terminate this Order, in whole or in part, at any time for any reason by providing notice to Seller in writing. In such event, Seller shall immediately comply with Buyer's instructions, and to the extent specified therein, stop work and the placement of subcontractors hereunder, and take any and all action necessary to protect property in Seller's possession, in which Buyer has or may acquire an interest. Within thirty (30) days of receipt by Seller of such notice, Seller shall advise Buyer of the actions taken by Seller to comply with Buyer's instructions and Seller shall also notify Buyer of Seller's intent to file a termination claim. In the event Buyer terminates and Seller submits a termination claim, Buyer shall pay to Seller the following: (a) amounts due for supplies delivered and accepted or services completed in accordance herein, and not paid for prior to the effective date of termination, (b) actual work in process costs incurred by Seller if properly allocable or apportionable under generally accepted accounting principles and practices to the terminated portion of the Order, including liabilities to subcontractors which are so allocable, excluding any and all costs of supplies which either can be diverted to other orders of Seller or retained by Seller for its own use or future orders, and exclusive of any costs attributable to Seller's supplies paid or to be paid for under (a) above, or (c) a reasonable settlement. The total settlement amount paid to Seller shall not exceed the Purchase Order price and, if it appears that the Seller would have sustained a loss on the entire Order had it been completed, an appropriate adjustment shall be made reducing the amount of the claim to reflect the indicated percentage of loss. Within six (6) months after the effective date of the termination and on forms provided by Buyer, Seller shall submit a termination claim to Buyer, with sufficient supporting data to permit Buyer's audit and verification, and Seller shall thereafter promptly furnish such supplemental and supporting information as Buyer requests. Buyer shall have the right to audit and examine all books, records, facilities, work, material, inventories, and other items relating to any termination claim of Seller. Seller agrees that its failure to submit a termination claim within the six (6) months set forth in this Section shall constitute a complete waiver any termination claim, unless Seller request in writing prior to the expiration of such time period that a time extension for filing its claim be granted by Buyer. Any such requested extensions, if approved, shall be effective only if authorized in writing by Buyer. Should there be an overpayment by Buyer to Seller as determined in accordance with this Section, as the result of a termination, Seller shall promptly reimburse Buyer for all sums overpaid.

**11. INTELLECTUAL PROPERTY OWNERSHIP AND PATENT INDEMNITY**

Buyer shall have sole ownership of all right, title, and interest in and to trademarks, copyrights, trade secrets, inventions, and all other intellectual property, whether or not patentable, which are produced, created, or developed by Seller as a result of the work and services performed by Seller for Buyer pursuant to this Order. Seller agrees to irrevocably assign the same to Buyer and to cooperate at Buyer's expense in perfecting of ownership. Seller warrants that all goods and services provided hereunder shall not violate or infringe on any patent, copyright, trademark, or proprietary interest. Notwithstanding, if such intellectual property is deemed to infringe on the rights of others, Seller further agrees (a) to defend, hold harmless and indemnify Buyer, its successors, affiliates, parent company and customers against all claims, demands, proceedings, losses, suits, damages, liability and expenses (including reasonable attorney's fees) arising out of or based upon any claim for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, trade secret, copyright or mask work right by reason of the manufacture, use or sale of the goods or services ordered from Seller, including infringement arising out of compliance with specifications furnished by Buyer, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions; (b) to waive any claim against Buyer under the Uniform Commercial Code or otherwise, in any way related to any claim described in (a) above; (c) to procure for Buyer the right to continue the use of such goods or services, or replace them with substantially equivalent non-infringing goods or services, or replace them with substantially equivalent non-infringing goods or services or modify the goods or services at Seller's expense so they no longer infringe should the manufacture, use or sale of the goods or services ordered be made the subject of any such suit or claim as described in (a) above, and (d) to grant to Buyer a worldwide, non-exclusive, royalty-free, irrevocable, paid up license to repair or have repaired the goods ordered hereunder. This Section shall survive termination, cancellation or expiration of this Order.

**12. TECHNICAL INFORMATION DISCLOSED**

By Buyer:

(a) Unless otherwise provided herein or authorized by Buyer in writing, Seller shall protect as proprietary and keep confidential all proprietary information including, but not limited to, designs, processes, drawings, specifications, reports, data, and other technical or business information and the features of all parts, equipment, tools or fixtures and other items furnished or disclosed to Seller by Buyer. Seller shall use such disclosed proprietary information, documents or items only in the performance of this Order and shall not disclose such to any third party without Buyer's prior written consent. Upon completion or termination of this Order, Seller shall, at Seller's expense, make such disposition of all such proprietary information, documents or items as directed by Buyer.

(b) Seller agrees that all proprietary information, as described in (a) above, including all rights to patents, trademarks, copyrights, trade secrets, and other related proprietary information shall be the sole and exclusive property of Buyer.

By Seller:

(a) Notwithstanding any document marking to the contrary, any information which Seller may have disclosed or may hereafter disclose to Buyer incidental to the placing and filling of this Order shall not be deemed to be confidential or proprietary information unless otherwise specifically agreed upon in a written Nondisclosure Agreement between the parties, and accordingly, Buyer shall not be liable for any use or disclosure thereof (other than liability which may result from a claim by Seller for patent infringement by Buyer).

(b) Notwithstanding the terms of Section 11, any designs, items, components, process drawings, specifications, information, data or computer programs which Seller discloses to Buyer in connection with



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this Order and which Seller has not marked with a limited rights legend shall not be considered proprietary to Seller or in any way restrict Buyer's use of such data.

**13. INDEMNIFICATION**

In the event Seller, its officers, employees, agents, suppliers or subcontractors at any tier enter Buyer's premises or utilizes the property of Buyer, whether on or off Buyer's premises, Seller shall defend, indemnify and hold Buyer, its officers, employees and agents, harmless from and against any claim, suit, loss, and expense (including reasonable attorney fees) or any liability whatsoever for any damage to the property or injuries (including death) to Buyer, its employees or any other person, including Seller's employees, arising from or as a result of the performance, actions or omissions of Seller, except for claims arising from the sole and exclusive negligence of Buyer. Seller shall take all precautions, special or otherwise, and shall be responsible for compliance with all local, state and federal safety laws in the performance of the work hereunder.

**14. INSURANCE**

- (a) Seller shall indemnify and hold harmless Buyer and Buyer's customers from and against all losses, liabilities, claims or demands whatsoever (including without limitation, all costs, expenses and attorney fees), arising out of any personal injury (death) or any damage to or loss or destruction of property, in any manner based upon, occasioned by, or attributable or related to performance under this Order whether by Seller, its subcontractors, any employee of Seller or its sub-contractors, (except where such injury to or death of persons or damage to or loss or destruction of property is due solely to the negligence of Buyer its officers, agents or employees). Seller shall maintain insurance coverage in amounts as follows:
- (b) Automobile Liability: Automobile Liability Coverage will include coverage for all owned, non-owned, and hired vehicles. Coverage will be limits of not less than \$1,000,000 combined single limit each occurrence for bodily injury and property damage. Pollution coverage included by ISO form CA 99 48. MCS-90 with limits required by the Motor Carrier Regulatory Reform and Modernization Act included.
- (c) Workers' Compensation: Statutory Workers' Compensation and Employers' Liability insurance in amounts of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.
- (d) Umbrella Liability: Umbrella Liability with limits of \$4,000,000 per Occurrence and Aggregate, with such coverage to be written on a follow form basis and shall provide coverage in excess of the underlying (a) General Liability, (b) Automobile Liability including Pollution, and (c) Employers Liability coverages.
- (e) Professional Liability: Professional (Errors & Omissions) Liability for consulting or design services (where applicable). The liability limits will not be less than \$1,000,000 for each Claim, \$1,000,000. Coverage may be provided on a Claims Made basis. If coverage is provided on a Claims Made basis the retroactive date must not be later than the first date services are provided.
- (f) Certificates of Insurance: Subcontractor shall, prior to commencing the Services, and thereafter upon the request of Control Southern, Inc., furnish Control Southern, Inc. with certificates evidencing such insurance which certificates shall be in a form reasonably acceptable to Control Southern, Inc. and shall, among other things:
  - i. Evidence and provide that the policies of insurance to which such certificate relates are in full force and effect and shall specify the applicable policy limits and the expiration date of the policy;
  - ii. Evidence and provide that Control Southern, Inc. is named as additional insured under the policies referenced in (a), (b) and (d) above. General Liability additional insured endorsement to include coverage for on-going and completed operations using CG 20 10 07/04 and CG 20 37 07/04, or their equivalent.
  - iii. Evidence and provide that Subcontractor and Subcontractor's Insurance Carrier endorses policy to include Waiver of Subrogation in favor of Control Southern, Inc. for policies referenced under (a), (b), (c) and (d).
  - iv. Evidence and provide that Control Southern, Inc. is provided coverage on a primary and non-contributory basis with respect to any similar insurance held by Control Southern, Inc. under the policies referenced in (a), (b), and (d) above.

Control Southern, Inc. shall be entitled to rely on such certificate and the information and statements contained therein. Copies of required endorsements must be attached to the Certificate of Insurance.

The foregoing provisions relative to insurance shall in no way limit or fix the liability of Subcontractor to Control Southern, Inc. or any other person or entity in respect of any act or omission of Subcontractor or any breach by Subcontractor of any obligations or duties owing under this Agreement or otherwise imposed by law.

Cancellation Provision: All policies shall provide thirty (30) days written notice of cancellation, non-renewal or material change to Control Southern, Inc. (10 Days for Non-Payment of Premium).

**15. REMEDIES**

The rights and remedies reserved to Buyer in this Order shall be cumulative, and additional to all other or further remedies provided in law or equity.

**16. SETOFF**

In addition to any right of setoff provided by law, all amounts due Seller shall be considered net of indebtedness of Seller to Buyer and its affiliates; Buyer may deduct any amounts due or to become due from Seller to Buyer and its subsidiaries from any sums due or to become due from Buyer to Seller.

**17. ADVERTISING, PUBLICITY**

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services herein ordered, or use any trademarks or trade names of Buyer, or Buyer's parent company, in Seller's advertising or promotional material. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this Order and shall not be required to make further payments except for conforming goods delivered prior to cancellation. Seller will not refer to or use the names, trademarks, or products of Buyer or any other Buyer affiliate or parent company in connection with any publicity or promotional activities without prior written permission of Buyer.

**18. GOVERNMENT COMPLIANCE**

Seller will comply with the Fair Labor Standards Act of June 30, 1938 (USC 201-209) as amended. Seller agrees to comply with all Federal, state and local laws, executive orders, rules, regulations and ordinances which may be applicable to Seller's performance of its obligations under this Order.

**19. NO IMPLIED WAIVER**

The failure of either party at any time to require performance by the other party of any provision of this Order shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this Order constitute a waiver of any succeeding breach of the same or any other provision.

**20. NON-ASSIGNMENT**

Seller may not assign or delegate its obligations under this Order without Buyer's prior written consent and any effort to the contrary shall be void.

**21. RELATIONSHIP OF PARTIES**

Seller and Buyer are independent contracting parties and nothing in this Order shall make either party the agent or legal representative of the other in any purpose whatsoever, nor does it grant either party or authority to assume or to create any obligation on behalf of or in the name of the other.

**22. TERM FOR CLAIMS**

Seller shall bring any claim against Buyer under this Order within one year of the date the Seller knew or reasonably should have known of the facts giving rise to such claim under this Order.

**23. CONSTRUCTION PRESUMPTION**

The Section headings in this Order are inserted for convenience only and shall have no effect on the meaning or interpretation of the Order.

**24. GOVERNING LAW**

- (a) This Contract shall be governed by and construed in accordance with the laws of the State of Georgia.
- (b) Each of the parties hereto submits irrevocably to the non-exclusive jurisdiction of the courts of the State of Georgia, in Forsyth County, as regards any claim or matter arising under this Contract.
- (c) No action or claim, regardless of form, arising out of transactions under this Contract may be brought by either party, more than two years after the cause of action or claim has accrued.

**25. SEVERABILITY**

If any term of this Order becomes invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule and all other provisions of this Order shall remain in full force and effect.

**26. ENTIRE AGREEMENT**

This Order, together with the attachments, exhibits, or supplements specifically referenced in this Order, constitutes the entire agreement between Seller and Buyer with respect to the matters contained herein. This Order may only be modified by a Purchase Order Amendment issued by Buyer or a written agreement entered into between Seller and Buyer.

ADDRESS INVOICE TO: Control Southern, Inc. 3850 Lakefield Drive Suwanee, GA 30024.  
Or email: ask.csi@controlsouthern.com