

Sacramento Ag Products, LLC. TERMS & CONDITIONS

1. **ACCEPTANCE OF TERMS AND CONDITIONS WITHOUT CHANGES.** These Terms and Conditions, together with the terms set forth in the Request for Proposal ("RFP") being submitted by Sacramento Ag Products, LLC. ("Sac Ag.") to the supplier ("Bidder") of the goods and/or services identified therein (collectively, the "Products/Services"), constitute the complete and final agreement between Sac Ag and Bidder with respect to such Products/Services (such Purchase Order and these Terms and Conditions of Purchase being referred to herein as "this Order"). Any conduct by Bidder recognizing the existence of an agreement (including without limitation acknowledgment or shipment) shall be deemed an acceptance by Bidder without exception to the terms and conditions of this RFP or Order. Additional or different terms already or hereafter proposed by Bidder, whether in a quotation, acknowledgment, invoice, or otherwise, are rejected and shall not apply. No change to this RFP or Order shall be binding unless agreed to in a writing signed by an officer of Sac Ag.

2. **CHANGES.** Sac Ag may at any time make changes to drawings, designs, specifications, materials, packaging, time and place of delivery, method of transportation, or other terms of this Order, which changes shall be immediately implemented by Bidder. If any such change causes an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this Order shall be accordingly modified in writing. Bidder agrees to accept any and all such changes, subject to the preceding sentence.

3. **SUBCONTRACTING.** Subcontracting is not allowed without Sac Ag's written consent.

4. **INDEPENDENT CONTRACTOR.** Nothing contained in this RFP is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Bidder shall at all times remain an independent contractor with respect to the work and/or services to be performed under this RFP. Any and all employees of Bidder or other persons engaged in the performance of any work or services required by Bidder under this RFP shall be considered employees or sub-contractors of the Contractor only and not of Sac Ag; and any and all claims that might arise, including Worker's Compensation claims, on behalf of said employees or other persons while so engaged in any of the work or services to be rendered or provided herein, shall be the sole obligation and responsibility of Bidder.

5. **TERMINATION FOR CONVENIENCE OF SAC AG.** Sac Ag may at any time terminate this RFP, any related Order, or any part hereof for its sole convenience. In the event of such termination, Bidder shall immediately stop all work and shall immediately cause its suppliers or subcontractors to cease such work. Bidder shall be paid for the work performed prior to the termination notice. Bidder shall not be paid for any work performed after receipt of the termination notice, except to the extent necessary to effect termination. Any claims under this section must be asserted in writing in detail within thirty (30) days after receipt of Sac Ag's termination notice. If this RFP is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Bidder under this RFP shall, at the option of Sac Ag, become the property of Sac Ag, and the Bidder shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

Notwithstanding the above, the Bidder shall not be relieved of liability to Sac Ag for damages sustained by Sac Ag as a result of any breach of this by Bidder. Sac Ag may, in such event, without payments due to Bidder for the purpose of set-off until such time as the exact amount of damages due to Sac Ag is determined. The rights or remedies provided for herein shall not limit Sac Ag, in case of any default by Bidder, from asserting any other right or remedy allowed by law, equity, or by statute.

6. **OWNERSHIP OF MATERIALS.** All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from this RFP shall become the property of Sac Ag upon final approval of the final report or upon request by Sac Ag at any time before then. Sac Ag may use, extend, or enlarge any document produced under this RFP without the consent, permission of, or further compensation to Bidder.

7. **TERMINATION FOR CAUSE.** Sac Ag may cancel this Order without penalty: (a) if Bidder fails to comply with the specifications or the terms and conditions of this Order; (b) if delivery is delayed beyond the requested delivery date; (c) if a petition in bankruptcy is filed by or against Bidder, Bidder is declared insolvent or has a receiver or trustee appointed for it or its assets, or if Bidder makes an assignment for the benefit of creditors or commences proceedings under any federal or state insolvency or similar law; or (d) if Sac Ag encounters any labor disputes, governmental orders or actions, unavailability of transportation, fires, floods, breakdowns of essential machinery, accidents, or other cause beyond its control which affects its ability to receive and use the Products/Services.

8. **DELIVERY. TIME IS OF THE ESSENCE** with respect to Bidder's obligations hereunder; if delivery of the Products/Services is not completed by the specified delivery date, Sac Ag reserves the right, in addition to its other rights, to return the Products/Services or terminate all or part of this Order and charge Bidder with all costs, expenses, and damages associated with such return or termination, including but not limited to a full refund of any amount already paid to Bidder by Sac Ag. Bidder shall strictly comply with delivery instructions contained in this Order; if none are stated, the Products/Services shall be delivered FOB Sac Ag's facility designated by Sac Ag. Sac Ag may delay delivery or acceptance for causes arising beyond its control.

9. **INSPECTION AND ACCEPTANCE.** All Products/Services are subject to Sac Ag's final inspection and approval. Sac Ag shall have a reasonable time to inspect the Products/Services after delivery at their destination. Upon notice, Sac Ag may make inspection visit(s) at the site where the Products/Services are being designed, manufactured, provided, or performed. If Sac Ag determines that part of the Products/Services are not in accordance with Sac Ag's specifications, Sac Ag has the right to reject any such Products/Services and is permitted to cancel any undelivered portion of this Order. Products/Services rejected or those which are supplied in excess of the quantities or the scope called for herein may be returned to Bidder at Bidder's expense or may remain unpaid. Payment for the Products/Services prior to inspection and approval shall not constitute acceptance thereof, and shall be made without prejudice to any and all claims that Sac Ag may have against Bidder. In the event the Products/Services must be installed, tested, inspected, or assembled prior to commercial use, they shall not be deemed finally accepted until such installation, testing, inspection, or assembly indicates that the Products/Services are approved in accordance with the specifications and are operating properly.

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10. **PACKAGING AND SHIPPING.** All packages shall be clearly marked with an appropriate description of the Products/Services, the purchase order number for such Products/Services, the part number(s), and quantity of items contained within each package. No additional charges of any kind, including charges for boxing, packaging, cartage, or other extras shall be added unless specified on the face of this Order.

11. **MATERIALS FURNISHED.** If Sac Ag furnishes any material for fabrication hereunder, Bidder: (a) agrees not to substitute any other material in such fabrication without Sac Ag's prior written consent; (b) agrees that title to such material shall not be affected by incorporation in or attachment to any other property; and (c) agrees to state and warrant in writing on its shipper and invoice for final parts that all material furnished by Sac Ag under this Order (except that which became normal industrial waste or was replaced at Bidder's expense) has been returned in the form of parts and unused material. Proceeds of scrap salvage shall accrue to Bidder and are reflected in the prices stated herein. Bidder will use any designs, tools, patterns, drawings, information, and equipment furnished by Sac Ag only in the performance of this Order unless Sac Ag's prior written consent is obtained. Bidder agrees that no inaccuracy in tools or fixtures which Sac Ag furnishes shall excuse performance that is not in strict accordance with the specifications. The contract price includes the cost of tooling (including gauges, jigs, fixtures, dies, molds, tools, patterns, and the like) that may be created or acquired by Bidder for use in the manufacture, fabrication, assembly, or delivery of the Products/Services called for herein and, unless otherwise specified, title to such tooling shall pass to Sac Ag upon its creation or acquisition and will remain in Sac Ag. Bidder shall deliver such tooling to Sac Ag upon request.

12. **TAXES.** Unless otherwise specified on the face of this Order, the prices herein include all applicable federal, state, and local taxes, customs, duties, and fees of every kind and nature, including, without limitation, sales and use taxes.

13. **INDEMNIFICATION.** Bidder shall defend, indemnify, and hold harmless Sac Ag its affiliates, officers, directors, employees, agents, customers, other suppliers, and subcontractors against all damages, claims, costs, and expenses (including attorneys' fees) arising out of or resulting from any act or omission of Bidder, its agents, employees, or subcontractors or which otherwise arises as a result of Bidder's performance of this Order including, without limitation, all liabilities to Sac Ag, its affiliates, officers, directors, employees, agents, customers, other suppliers, and subcontractors.

14. **COMPLIANCE WITH LAW.** Bidder warrants that all Products/Services provided hereunder have been produced and performed in compliance with all applicable local, state (or province), federal, and foreign laws, rules, regulations, standards, and codes including, but not limited to, the Fair Labor Standards Act, environmental protection laws, and occupational health and safety laws. For Orders within the United States, Bidder's invoices shall contain a certification substantially as follows: "Bidder represents that these items were produced and provided in compliance with all applicable requirements of the Fair Labor Standards Act and of regulations and orders of the U.S. Department of Labor issued thereunder." Bidder warrants that it shall not do anything which would cause the work environment for Sac Ag's customers, agents, or employees not to be in compliance with the law. If Bidder is located in the United States or if the work is to be performed in the United States, Bidder also warrants that it shall at all times comply with applicable provisions relating to obligations of government contractors and subcontractors, which are incorporated in this Order by reference, including without limitation the OFCCP Rules and Regulations, 41 CFR 60-1, et. seq. (including the reporting, record keeping and affirmative action program requirements) incorporating the Equal Opportunity Clause of Executive Order 11246, the maintenance of nonsegregated facilities, the Vietnam Era Veteran's Readjustment Act of 1974, The Rehabilitation Act of 1973, Executive Order 11701 relating to the employment of veterans, and Executive Orders 11625 and 12138 relating to participation by minority and women-owned businesses and the utilization of concerns owned and controlled by socially and economically disadvantaged individuals.

15. **WARRANTIES.** Bidder warrants that all Products/Services delivered and provided shall (a) be new and of first quality; (b) be merchantable and free from defects in materials and workmanship; (c) conform to specifications, descriptions, and other conditions specified by Sac Ag; (d) be performed by competent and qualified personnel in a proper and workmanlike manner; (e) be free from liens and encumbrances with good title conveyed upon payment of the purchase price; (f) be fit and safe for their intended purpose; and (g) be approved by qualified licensed professionals in the event professional design work is involved. Bidder also warrants that it shall obtain and assign or otherwise provide to Sac Ag the benefits of warranties and guarantees provided by manufacturers or suppliers of material or equipment incorporated into the Products/Services, and shall perform its responsibilities so that such warranties or guarantees remain in full effect.

Bidder agrees to promptly replace or otherwise correct, without expense to Sac Ag, any of the Products/Services which do not conform to the foregoing warranties. In the event that Bidder fails to promptly make such replacement or correction, Sac Ag may cause such replacement or correction to be made and charge Bidder for all expenses associated therewith. The foregoing warranties and remedies shall be in addition to any warranties or remedies provided by law and shall survive inspection, test, acceptance, approval, and payment.

16. **WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS; INDEMNIFICATION.** Bidder warrants that neither the sale nor use of the Products/Services provided pursuant to this Order will infringe upon any U.S. or foreign patent, copyright, trademark, or any other intellectual property right (collectively, "Property Rights"). Bidder will defend every claim, demand, or legal proceeding against Sac Ag, its affiliates, officers, directors, employees, agents, customers, or anyone selling or using any of the Products/Services which alleges that the Products/Services sold hereunder infringe any such Property Rights or constitute unfair competition or trade secret violations; and Bidder will indemnify and hold harmless Sac Ag, its affiliates, officers, directors, employees, agents, and customers from all costs and expenses (including attorneys' fees) which Sac Ag incurs in defending any such claim, demand, or suit, together with all liabilities, judgments, costs, damages, and profits recoverable therein. Sac Ag shall have the right to employ, at Bidder's expense, counsel on its own behalf, and shall have the right to participate in the defense of such claim, demand, or legal proceeding.

17. **INTELLECTUAL PROPERTY LICENSE.** If any experimental, developmental, or research work is called for or required hereunder, Bidder agrees to and hereby does grant to Sac Ag an irrevocable, non-exclusive, fully transferable, royalty-free license to make, have made, use, and sell any invention, improvement, or discovery (whether or not patentable) that Bidder conceives or first actually reduces to practice in performing this Order. Bidder agrees to and hereby does grant to Sac Ag (a) an irrevocable, non-exclusive, fully transferable, royalty-free license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, any copyrighted or copyrightable material or service ordered as Products/Services or incorporated in or supplied as a supplement with any Products/Services; and (b) the right to reproduce, use, and disclose for any purpose all or any part of the reports, drawings, blueprints, data, and technical information provided or specified to be provided by Bidder to Sac Ag under this Order.

18. **PROPRIETARY INFORMATION; CONFIDENTIALITY; ADVERTISING.** All information furnished by Sac Ag, by any other person acting on behalf of Sac Ag, and all information learned or observed about Sac Ag or its operations through performing this Order is confidential and Bidder shall not

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disclose any such information to any other person, or use such information for any purpose other than for performing this Order without Sac Ag's express written consent. All information in tangible form, including drawings, samples, models, specifications, or other documents provided by Sac Ag or prepared by Bidder for Sac Ag shall be returned to Sac Ag promptly upon request. Bidder shall not publicize the fact that Sac Ag has contracted to purchase Products/Services from Bidder, nor shall any information relating to this Order be disclosed without Sac Ag's written consent. Unless otherwise agreed in writing, no information disclosed by Bidder to Sac Ag shall be deemed confidential and Bidder shall have no rights against Sac Ag with respect to Sac Ag's use thereof.

19. **LIENS.** Bidder agrees that it shall not file any liens as a result of the Products/Services hereunder and that it shall not permit its subcontractors or other suppliers to file such liens. When requested, Bidder shall provide Sac Ag with lien waivers for itself, its subcontractors, and other suppliers in a form satisfactory to Sac Ag. Sac Ag may withhold any payment(s) otherwise due until it has received reasonable assurances that all of Bidder's obligations respecting the Products/Services have been paid. If a lien is filed, Bidder shall cooperate fully with Sac Ag, at Bidder's expense, to cause the lien to be removed.

20. **ASSIGNMENT OR TRANSFER OF INTEREST.** The Bidder shall not assign any interest in this RFP, and shall not transfer any interest in the same either by assignment or novation without the prior written approval of Sac Ag, provided, however, that claims for money due or to income due to the Bidder may be assigned to a bank, trust company or other financial institution, or to a Trustee in Bankruptcy without such approval. Notice to any such assignment or transfer shall be furnished to Sac Ag.

21. **INSURANCE.** Bidder shall obtain and maintain in force one or more continuous commercial liability insurance policies, with an endorsement in form reasonably satisfactory to Sac Ag naming Sac Ag as an additional insured, that: (a) insure against bodily injury (including death) and property damage caused by the Products/Services with limits not less than \$1,000,000 per occurrence and an annual aggregate of not less than \$2,000,000; (b) contain products and completed operations coverages with an annual aggregate of not less than \$2,000,000; and (c) contain a contractual liability endorsement. Bidder shall maintain auto liability with a combined single limit of not less than \$1,000,000 and cargo coverage in the amount of \$100,000 per shipment; pollution liability with limits not less than \$1,000,000 per claim; excess/umbrella liability policy with limits of not less than \$3,000,000 per occurrence and an annual aggregate of not less than \$3,000,000; professional liability with limits not less than \$1,000,000 per occurrence; statutory workers' compensation coverage; and employer's liability with limits not less than \$500,000 per occurrence. Upon request Bidder will provide Sac Ag with one or more certificates evidencing such insurance coverage, and any related endorsements and policies. Any insurance required to be carried by Bidder, with the exception of workers' compensation, shall list Sac Ag as an additional insured and shall be primary, not excess, to any other insurance carried by Sac Ag. In the event Bidder fails to keep in effect at all times said insurance coverage, Sac Ag may, in addition to any other remedies it may have, terminate this Order and hold Bidder responsible for any resulting damages.

22. **INDEPENDENT CONTRACTOR.** Bidder, its subcontractors and other suppliers, shall at all times be independent contractors and no express or implied representations to the contrary shall be made. Bidder shall at all times retain exclusive liability for wages and all employment-related obligations due its employees and shall indemnify Sac Ag for any liability arising therefrom.

23. **STATUTE OF LIMITATIONS.** All rights of Bidder to commence any court action or proceeding with respect to this Order shall terminate one (1) year after the cause of action has accrued.

24. **LABOR DISPUTES.** Whenever Bidder has knowledge that any present or potential labor dispute is delaying or threatens to delay the timely performance of this RFP and any related Order, Bidder shall immediately give notice thereof, including all information relevant thereto to Sac Ag, and if this RFP or Order is issued under a Government prime contract, or subcontract thereunder, such notice shall also be given to the nearest representative of the Government Department concerned.

25. **ERRORS IN BIDS.** Bidders are cautioned to verify their bids before submission. Negligence on the part of the Bidder in preparing the bid confers no right for withdrawal or modification of the bid after it has been opened. In case of error in the extension of prices in the bid, the unit prices will govern.

26. **MISCELLANEOUS.** (a) This RFP and any related Order and the parties' performance hereunder shall be governed by the courts and the internal laws of the State of Wisconsin (including the Uniform Commercial Code as adopted), without giving effect to its conflict of laws principles; (b) no remedy provided herein shall be exclusive of any other remedy hereunder or provided by any applicable law; (c) the invalidity or unenforceability of any provision of this RFP or Order shall not affect the validity or enforceability of any of the other provisions of this RFP or Order; (d) this RFP or Order shall not be assigned by Bidder, and Bidder shall not delegate in any manner to any other person the performance of any work or the supplying of any Products/Services under this RFP or Order, in either case without the prior written consent of Sac Ag; (e) Sac Ag's failure to insist on performance of any of the terms of this RFP or Order, its failure to exercise any right or privilege, or its waiver of any breach hereunder shall not effect a waiver of any other right or privilege, whether of the same or similar type; (f) in the event Sac Ag is involved in any litigation with respect to this RFP or Order, Sac Ag shall recover from Bidder its costs and attorneys' fees incurred in enforcing or defending its rights hereunder; and (g) captions preceding particular sections are for convenience only and are not to be construed as part of this RFP or Order or as a limitation of the scope of a particular section to which they refer. If Bidder is a supplier located outside the United States, then: (i) the 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply; and (ii) except as otherwise specified, all customs fees, import duties, cargo insurance, taxes, and other charges imposed on or relating to the purchase or sale of the Products/Services shall be paid by Bidder, and prices include all commercial export packaging.