

**HEIFER PROJECT INTERNATIONAL  
PURCHASE ORDER TERMS**

Updated by Legal Services/Procurement as of April 24, 2018

**ARTICLE 1. INTERPRETATION**

**Section 1.1. Defined Terms**

As used herein, these words have these meanings:

- (a) **"Amendment"** means an amendment to the Contract, signed by the Parties.
- (b) **"Buyer"** means **Heifer Project International**, a nonprofit corporation formed under the laws of the State of Arkansas.
- (c) **"Buyer Contact Email Address"** means the email address provided by Buyer in the Order.
- (d) **"Carrier"** means the individual or entity engaged by Seller to transport the Goods and/or Services.
- (e) **"Contract"** means the contract for the sale and purchase of the Goods and/or Services, and includes the Order and these Terms.
- (f) **"Delivery Address"** means the address provided in the Order.
- (g) **"Due / Delivery Date"** means the date the Goods and/or Services are due to Buyer, as specified in the Order.
- (h) **"Goods"** means the goods (including any installment of the goods or any part of them) described in the Order.
- (i) **"Order"** means Buyer's purchase order to which these Terms are annexed, and into which these Terms are incorporated by this reference.
- (j) **"Parties"** means Buyer and Seller.
- (k) **"Party"** means Buyer or Seller.
- (l) **"Price"** means the price of the Goods and/or Services.
- (m) **"Seller"** means the person so described in the Order.
- (n) **"Services"** means any services that are directly related, and incidental to, the Goods described in the Order.
- (o) **"Specifications"** includes any plans, drawings, data or other information relating to the Goods and/or Services, as referenced in, and incorporated into, the Order.
- (p) **"Terms"** means the standard terms of purchase set out in this document.

**Section 1.2. Statutory References**

Any reference in these Terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted, or extended at the relevant time.

**Section 1.3. Headings**

The headings in these Terms are for convenience only and shall not affect their interpretation.

**ARTICLE 2. BASIS OF PURCHASE**

- (a) The Order constitutes an offer by Buyer to purchase the Goods and/or Services, subject to these Terms.

- (b) These Terms shall apply to the Contract and to any Order, to the exclusion of any other terms on which any quote has been given to Buyer or subject to which an Order is accepted or purported to be accepted by Seller.
- (c) The Order will lapse unless unconditionally accepted by Seller within **ten (10) business days** of the date of the Order. Acceptance of the Order may be made by (i) Seller signing the Order, physically or electronically, and returning it to Buyer, or (ii) Seller's delivery of the applicable Goods and/or Services to Buyer.
- (d) No variation to the Order or these Terms shall be binding unless agreed to in an Amendment.

**ARTICLE 3. SPECIFICATIONS/OWNERSHIP**

- (a) The quantity, quality, and description of the Goods and/or Services shall, subject to these Terms, be as specified in the Order.
- (b) Any Specifications, together with the copyright, design rights or any other intellectual property rights in the Specifications, shall be the exclusive property of Buyer, and Seller assigns, with full title guarantee to Buyer, all such copyright, design rights and other intellectual property (for no further consideration), subject only to the payment of the Price. Seller shall not disclose to any third party or use any such Specification except as required for the purpose of the Contract.
- (c) Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing, and delivery of the Goods and/or Services.
- (d) Seller shall not unreasonably refuse any request by Buyer to inspect and test the Goods and/or Services during manufacture, processing, or storage, and Seller shall provide Buyer with all facilities reasonably required for inspection and testing.
- (e) If, as a result of inspection or testing, Buyer is not satisfied that the Goods and/or Services will comply in all respects with the Contract, and Buyer so informs Seller within **seven (7) days** of inspection or testing, Seller shall take such steps as are necessary to ensure compliance.
- (f) The Goods and/or Services shall be marked in accordance with Buyer's instructions and any applicable regulations or requirements of the Carrier, and shall be properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

#### ARTICLE 4. PRICES

- (a) The Price of the Goods and/or Services shall be as stated in the Order and, unless otherwise so stated, shall be:
- (i) Exclusive of any applicable franchise, sales, or use taxes (which shall be payable by Buyer); and
  - (ii) Inclusive of all charges for packaging, packing, shipping, carriage, insurance, and delivering the Goods and/or Services to the Delivery Address, and inclusive of any duties, imposts, or levies.
- The Supplier shall be responsible for all other taxes, assessments, permits, and fees, however designated, that are levied upon the Contract, the Order, and the Goods and/or Services, except for taxes based upon the income of Buyer. No taxes of any type shall be added to invoices without Buyer's prior written approval.
- (b) No increase in the Price may be made (whether on account of increased material, labor, or transport costs, fluctuation in rates of exchange, or otherwise) without Buyer's prior written approval.
- (c) Seller will give Buyer the benefit of any Price reduction occurring before the Due / Delivery Date or the actual delivery date, whichever is later. Seller warrants that the Price for the Goods and/or Services is not less favorable than the price currently extended to any other customer of Seller for the same or similar articles in similar quantities.
- (d) Buyer shall be entitled to any discount for prompt payment, bulk purchase, or volume of purchase customarily granted by Seller, whether or not shown on its own terms of sale or provided for in the Contract.

#### ARTICLE 5. TERMS OF PAYMENT

- (a) Seller may invoice Buyer on or at any time after delivery of the Goods and/or Services. Each invoice shall include the number of the applicable Order. Originals of all invoices and, if applicable, bills of lading and air express receipts, shall be sent via electronic mail to Buyer Contact Email Address.
- (b) Unless otherwise stated in the Order, Buyer shall pay the Price within **ten (10) business days** after the end of the month during which Buyer receives a proper invoice or, if later, after Buyer's acceptance of the Goods and/or Services.
- (c) Buyer may set off against the Price any sums owed to Buyer by Seller.

#### ARTICLE 6. DELIVERY AND ACCEPTANCE

- (a) The Goods and/or Services shall be delivered to the Delivery Address on the Due / Delivery Date, during Buyer's usual business hours.

- (b) Where the Due / Delivery Date is to be specified after the placing of the Order, Seller shall give Buyer reasonable notice of the specified date.
- (c) The time of delivery of the Goods and/or Services is of the essence in connection with the Contract.
- (d) Packing slips must accompany each case, parcel, or container, showing Buyer's order number, item number, and a complete description of its contents.
- (e) If the Goods and/or Services are to be delivered in installments, the Contract will be treated as a single contract and not severable.
- (f) Buyer may reject any Goods and/or Services delivered that are not in accordance with the Contract, and shall not be deemed to have accepted any Goods and/or Services until Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods and/or Services has become apparent.
- (g) Seller shall supply Buyer in good time with any instructions or other information required to enable Buyer to accept delivery of the Goods and/or Services.
- (h) Buyer shall not be obliged to return to Seller any packaging or packing materials for the Goods and/or Services, whether or not the applicable Goods and/or Services are accepted by Buyer.
- (i) If the Goods and/or Services are not delivered on the Due / Delivery Date then, without limiting any other remedy, Buyer shall be entitled to deduct from the Price or (if Buyer has paid the Price) to claim from Seller by way of liquidated damage for delay, **one percent (1%)** of the Price for every day of delay. In addition, Buyer reserves the right to return any or all Goods and/or Services if delivered to Buyer more than **ten (10) days** after the Due / Delivery Date.

#### ARTICLE 7. RISK OF LOSS AND PASSAGE OF TITLE

- (a) Risk of damage to or loss of the Goods and/or Services shall pass to Buyer upon delivery to Buyer in accordance with the Contract.
- (b) Title in the Goods and/or Services shall pass to Buyer on delivery, unless payment for the Goods and/or Services is made prior to delivery, when it shall pass to Buyer once payment has been made and the Goods and/or Services have been appropriated to the Contract by Seller, with the express or implied assent of the Buyer.

#### ARTICLE 8. WARRANTIES AND LIABILITY

- (a) Seller warrants to Buyer that the Goods and/or Services, and their packaging and labeling, shall be in merchantable condition and shall be free from defects in design, material, and workmanship, and shall be in

- conformity with any relevant Specification or sample.
- (b) Seller warrants that the Goods and/or Services shall be fit for such particular purposes and uses, if any, as specified by Buyer or otherwise known to Seller, or held out by Seller, and shall comply with all legal requirements relating to the Goods and/or Services.
  - (c) Seller warrants that the Goods and/or Services shall be free and clear of any lien or other adverse claim against title, and performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as is reasonable for Buyer to expect given the industry and circumstances.
  - (d) All warranties contained herein shall survive inspection, test, and acceptance by Buyer.
  - (e) Without limiting any other remedy, if any Goods and/or Services are not supplied or performed in accordance with the Contract, then Buyer shall be entitled:
    - (i) To require Seller, without expense to Buyer, to repair the Goods and/or Services, or to supply replacement Goods and/or Services in accordance with the Contract within **ten (10) days**; or
    - (ii) At Buyer's sole option, and whether or not Buyer has previously required Seller to repair the Goods and/or Services or to supply any replacement Goods and/or Services, to treat the Contract as discharged by Seller's breach, and require the repayment to Buyer of any part of the Price which has been paid.
  - (f) Seller shall indemnify Buyer in full against all liability, loss, damages, costs, and expenses (including legal expenses) awarded against or incurred or paid by Buyer as a result of or in connection with:
    - (i) Breach of any warranty given by Seller;
    - (ii) Any claim that the Goods and/or Services infringe, or their importation, use, or resale infringes, the patent, copyright, design right, trademark, or other intellectual property rights of any other person, except to the extent that the claim arises from Seller's compliance with Specifications provided by Buyer;
    - (iii) Any claims made against Buyer based upon, relating to, or arising out of any claimed defects in the Goods and/or Services;
    - (iv) Any alleged violation by the Goods and/or Services, or in the manufacture or sale of the Goods and/or Services, of any statute, ordinance, or administrative order, rule, or regulation; and
    - (v) Any act or omission of Seller or its employees, agents, or subcontractors in supplying, delivering, performing, and/or installing the Goods and/or Services.
  - (g) Seller's warranties (and any consumer warranties, service policies, or similar undertakings of Seller) shall be enforceable by Buyer's customers associated with the Contract, and by any subsequent owner or operator of the Goods and/or Services, as well as by Buyer.
  - (h) Neither Seller nor Buyer shall be liable to the other, or be deemed to be in breach of the Contract, by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure is beyond that Party's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond either Party's reasonable control:
    - (i) Act of God, explosion, flood, tempest, fire, accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition; or
    - (ii) Import or export regulations or embargoes, strikes, lockouts, or other industrial actions or trade disputes (whether involving employees of either Seller or Buyer or of a third party).

#### ARTICLE 9. CANCELLATION/TERMINATION

- (a) Buyer may cancel the Order in respect to all or part of the Goods and/or the Services by giving notice to Seller at any time prior to delivery or performance, in which event Buyer's sole liability shall be to pay to Seller the Price for the Goods and/or Services completed by Seller and delivered to Buyer up to the date of cancellation, less Seller's net saving of cost arising from cancellation.
- (b) Buyer may terminate the Contract without liability at any time in the event of:
  - (i) The liquidation or insolvency of Seller;
  - (ii) The appointment of a receiver or similar officer for Seller;
  - (iii) The assignment by Seller for the benefit of all or substantially all of its creditors;
  - (iv) The entry by Seller into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations;
  - (v) The filing of a petition in bankruptcy by or against Seller under any bankruptcy or debtors' law which is not dismissed within **ninety (90) days**;
  - (vi) Seller ceasing to carry on business, or threatening to cease carrying on business; or
  - (vii) Buyer reasonably believing that any of the events mentioned above is about to occur in relation to Seller, and Buyer notifying Seller accordingly.

#### ARTICLE 10. MISCELLANEOUS

- (a) The Order is personal to Seller, and Seller shall not

assign or transfer, or purport to assign or transfer to any other person, any of its rights, or subcontract any of its obligations, under the Contract.

- (b) A notice required or permitted to be given by either Party to the other under these Terms shall be in a writing addressed to the other Party at that Party's registered office or principal place of business, or such other address as may at the relevant time have been given to the Party giving the notice according to this provision.
- (c) No waiver by Buyer of any breach of the Contract by Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (d) If any provision of the Contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract shall not be affected.
- (e) The Contract constitutes the entire agreement between the Parties as it relates the subject matter hereof, and all prior representations or arrangements on this subject matter are superseded hereby.
- (f) Seller represents, warrants, and covenants that it is in good standing in its state and country of origin, and that it is in compliance with any and all applicable anti-terrorism and anti-corruption laws, rules, and regulations.
- (g) The Contract shall be construed in accordance with, and all disputes shall be governed by, the laws of the State of Arkansas and the United States of America, specifically including the provisions of the Uniform Commercial Code as adopted by the State of Arkansas, and Seller agrees to submit to the jurisdiction of the courts of the State of Arkansas in the event of any proceedings related to this Contract.