

PURCHASE ORDER TERMS AND CONDITIONS

1. The terms and conditions hereof become the exclusive and binding agreement between the parties covering the work performed ("Work") and materials purchased ("Materials") hereunder when this Purchase Order is accepted by acknowledgment of Subcontractor or Vendor (collectively "Subcontractor") or commencement by the performance of the Work or the Materials are caused to be delivered, unless a written Master Subcontract or Purchase Agreement ("Master Agreement") exists, in which case, this Purchase Order shall be subject thereto. Additional or different terms proposed by Subcontractor will not be applicable unless accepted in writing by Niscayah. No change, modification, waiver or revision of this Purchase Order shall be effective unless in writing and signed by an authorized representative of Niscayah.

2. Niscayah agrees to pay Subcontractor monthly payments for labor and the Material which have been incorporated into the Work; subject to a 10% retention, payments to Subcontractor shall be made only with sums received by Niscayah from the Customer for work performed by Subcontractor no later than fourteen days after receipt by Niscayah from Customer for the Work or Materials, unless disputed. Subcontractor agrees to furnish, if and when required by Niscayah, payroll affidavits, receipts, vouchers, releases of liens, and/or claim for labor, and material, and agrees to furnish same from its subcontractors, suppliers and/or materialmen in a form satisfactory to Niscayah, prior to receipt of any payment. Subcontractor further agrees to waive any right to receive payment for Work or Materials or portions of Work or Materials which is not invoiced within 90 days of completion of the Work, portions of the Work, or delivery of the Materials

3. Subcontractor will at all times keep the property on which the Work is being performed free and clear of all claims and liens in connection with the Work. Niscayah is authorized to use whatever legal means it may deem appropriate to cause the claim or lien to be resolved or removed, and the cost of doing so (plus attorneys' fees) will be immediately due and payable to Niscayah by Subcontractor. Subcontractor represents and warrants that it has the right to transfer title to the Materials to Niscayah or its assignees and the Materials do not infringe any intellectual property rights of any third party.

4. If Subcontractor defaults in performing the Work, deliver upon its obligations herein, or otherwise causes delay to the Work or project, Subcontractor will be liable for all losses, costs, expenses, liabilities and damages sustained by Niscayah, or for which Niscayah may be liable because of Subcontractor's default, breach of its obligations, or delay. In the event Subcontractor fails or neglects to carry out its obligations under this Purchase Order Niscayah shall give notice to Subcontractor of such default or delay, and Niscayah may, at its option do one or more of the following: (a) immediately terminate or suspend this Purchase Order, in whole or in part; (b) directly assume any obligations of

Subcontractor at Subcontractor's expense, including but not limited to, employ other persons perform Work or provide the Materials, and charge all costs and expenses to Subcontractor incurred by Niscayah, together with all loss or damage occasioned thereby; (c) withhold payment of any monies, and any future payment, due Subcontractor pending corrective action, or until the balance of the Work or delivery of the Materials is completed, to the extent required by, and to the satisfaction of, Niscayah; and (d) exercise any other remedy available to Niscayah under law. Niscayah's decision to terminate or suspend a particular Work Order or Purchase Order under this Section shall not affect other Purchase Orders in effect between the parties provided that such Purchase Orders are not specifically terminated or suspended by Niscayah.

5. Subcontractor shall defend, indemnify and save harmless Niscayah and Customer, including each of their officers, agents, employees, affiliates, parents and subsidiaries from and against any and all claims, demands, causes of action, damages, costs, expenses (including attorneys' fees), and losses of whatsoever kind, or character arising out of, or related to the Materials provided herein, or by reason of any liability or obligation in any manner caused or claimed to be caused by any act, omission, fault or negligence of Subcontractor, its employees, agents, affiliates, vendors, or subcontractors in connection with or incident to the Work or Materials delivered. The indemnity obligation set forth in this paragraph is not limited by the insurance requirements or limits set forth in paragraph 6.

6. Title to and risk of loss of the Materials shall pass to Niscayah upon receipt of Materials at the final destination set forth by Niscayah. With respect to the Work, Subcontractor agrees, at its own expense, to procure and maintain insurance coverage (without burning limit provisions) as set forth in this paragraph. The following policies (except for the Workers' Compensation and Employer's Liability) are to name Niscayah and Customer, and each of their parent, affiliates, officers, directors, agents, and employees as additional insureds (in the form of ISO CG 20 26 07 04 and CG 20 37 074, or equivalent forms); and to contain an endorsement requiring that the insurer provide to Niscayah 30-day prior notice of the cancellation or other termination of the below listed insurances; and on the Workers' Compensation policy Subcontractor's insurer(s) will waive all rights of recovery, under subrogation or otherwise, against Niscayah and Customer. An insurance certificate must be presented to Niscayah in form and content satisfactory to Niscayah prior to commencing any work and prior to receiving any payments, evidencing purchase of the following insurance which shall be primary to any other insurance held by Niscayah or customer as follows:

a) Workers' Compensation, as required by any applicable law or regulations, and Employer's Liability with limits not less than \$500,000 each accident for bodily injury by accident; \$500,000 policy limit for bodily injury by disease; \$500,000 each employee for bodily injury by disease;

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b) General Liability policy on an occurrence basis, against claims for personal injury (including bodily injury and death) and property damage (including loss of use), with limits not less than \$1,000,000 each occurrence and \$1,000,000 personal and advertising injury, \$1,000,000 products-completed operations aggregate, \$2,000,000 general aggregate, \$5,000,000 excess and/or umbrella; and

c) Automobile Liability covering all owned, hired, and non-owned automobiles, with limits not less than \$1,000,000 for bodily injury and property damage combined single limit per occurrence.

7. Subcontractor will make changes in the Work as directed by Niscayah in writing. Subcontractor must promptly submit to Niscayah a request for any adjustment in the Subcontract or Purchase Order Price ("Subcontractor Price") and time estimate for the changed work along with all documentation necessary to substantiate the adjustment. The Subcontract Price and/or the time for Subcontractor's performance will be appropriately adjusted as mutually agreed. If Niscayah and Subcontractor cannot agree on such adjustment(s), Subcontractor will nonetheless proceed with and timely perform the changed work per Niscayah's written direction, so as not to delay the Work. If Subcontractor makes any changes in the Work or Materials without written direction from an authorized Niscayah representative, Subcontractor will not be paid for that changed work or Materials and shall release Niscayah and assume all liability for any and all losses, costs, expenses, damages of any nature in any way arising out of any such change even if direction is received orally from Niscayah, or any form of direction, written or otherwise, is received from Customer or any other person or entity.

8. Subcontractor warrants that it is properly licensed to perform the Work or provide the Materials, in the City, County and State in which the proposed Work is to be performed or Materials are requested and/or provided.

9. The Subcontractor shall take all safety precautions and shall comply fully with all state and federal laws, orders, citations, rules, regulations, and municipalities regarding occupational health and safety, the handling and storage of hazardous materials, accident prevention, and safety equipment and practices, including but not limited to the accident prevention and safety program of Niscayah and Customer, where applicable. In addition to its obligations under paragraph 5, Subcontractor shall indemnify, defend, and save harmless Niscayah and Customer from all claims, suits, citations, penalties, damages, expense or loss arising from any failure on the part of the Subcontractor to comply with any provisions of the law with respect to occupational safety and health.

10. Subcontractor agrees to comply with all aspects of Niscayah's Drug Free Workplace and Substance Abuse Policy and any similar requirements of Niscayah or Customer (including drug/alcohol screening tests).

11. Subcontractor shall keep the premises, workplace and surrounding area(s) in a clean, safe and orderly condition. Upon completion of the Work, Subcontractor, at its own expense, will remove all waste materials or rubbish caused by operations performed under this Purchase Order.

12. Subcontractor warrants and guarantees that all Materials furnished shall be new and of good quality, free from defects for a period of one (1) year from the later date of acceptance by Customer and Niscayah as evidence by a Notice of Completion. Subcontractor further warrants and guarantees that the Work shall be performed in a neat, skillful and workman like manner for a period of one (1) year from the later of the date of acceptance as evidenced by a Notice of Acceptance. Subcontractor agrees to immediately remedy defects upon notice of said defects from Niscayah. If such are not immediately corrected, Subcontractor agrees to allow Niscayah to remedy such defect(s) at Subcontractor's expense. This warranty shall be in addition to and not in limitation of any other warranty or remedy provided by law or under this Purchase Order.

13. "Confidential Information" means the trade secrets and proprietary information of Niscayah, the financial terms of this Agreement, any information Niscayah or its customer has indicated to be confidential or that reasonably ought to be considered confidential; and information or materials Niscayah is required by law or third party agreement to maintain as confidential, including but not limited to any and all customer information, client information, information concerning potential customers or clients, software, programming, databases, source or object code, documentation, research, designs, diagrams, algorithms, inventions, patents and patent applications or other intellectual property, techniques, financial information, business forecasts, marketing plans, written reports, findings, conclusions, recommendations, data and analyses, and information or data relating to products, services, business plans, or legal affairs of Niscayah.

In General. During the term of this Agreement, Subcontractor may, to the extent reasonably necessary to perform this Agreement, receive Confidential Information, or Confidential Information of a third party that Niscayah is required by law or agreement to maintain as confidential. Subcontractor shall treat such information as confidential and shall not use it or disclose it to any third party except as expressly allowed under this Agreement. These obligations of confidentiality will survive the termination of this Agreement. These confidentiality obligations will not apply to any Confidential Information which: (a) is or subsequently becomes available to the general public other than through a breach of this Agreement; (b) is already known to Subcontractor before disclosure by Niscayah, as evidenced by written documents; (c) is developed through the independent efforts of Subcontractor, as evidenced by written documents; (d) is required by law to be disclosed but only to the extent of such required disclosure and in compliance with the Notice provision in this section 13 below; or (e) Subcontractor rightfully receives from a third party without restriction as to confidentiality or

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use. Nothing in this subsection shall require Niscayah to provide or provide access to any Confidential Information.

Degree of Care. Subcontractor agrees to use the same degree of care that it uses to protect its own Confidential Information of a similar nature and value, but not less than reasonable care, and shall take reasonable security measures and use reasonable care to preserve and protect the secrecy of, and to avoid disclosure of, Niscayah's Confidential Information.

Notice. In the event Subcontractor or its directors, officers, members, employees, agents, or independent contractors is required by law, regulation or legal process to disclose Niscayah's Confidential Information, Subcontractor shall notify Niscayah promptly so that Niscayah may seek a protective order or other appropriate remedy or, in Niscayah's sole discretion, waive compliance with the terms of this subsection. In the event no such protective order or other remedy is obtained, or if Niscayah waives compliance with the terms of this subsection, Subcontractor will furnish only that portion of the Confidential Information which it is advised by counsel is legally required to be disclosed and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

14. If Subcontractor uses Niscayah's equipment, materials, labor, supplies or facilities, Subcontractor accepts the equipment, materials, labor, supplies and facilities "**AS IS**", and assumes full responsibility for physical damage to such equipment, materials, labor, supplies and facilities used.

15. Any waiver by Niscayah of any breach of any provision of this Purchase Order by the Subcontractor shall not constitute a waiver of any future breach of any provision herein.

16. Subject to the rights of indemnification and defense contained in this Purchase Order, if any dispute shall arise between the parties in excess of the small claims limit for the applicable jurisdiction, the matter shall be submitted to binding arbitration and will be conducted in accordance with the rules of the American Arbitration Association as supplemented by such additional powers granted under applicable state law. In the event of such action or proceeding instituted with respect to this Purchase Order, the party prevailing in such action shall be entitled to collect from the non-prevailing party reasonable attorney's fees and other legal costs and expenses.