

# **Border States Industries, Inc.**

## **Purchase Order Terms and Conditions**

### **1. General**

These Purchase Order Terms and Conditions (Terms) are made and entered into effective as of the date set forth below, by and between Border States Industries, Inc. (Border States) and Vendor. These Terms constitute the entire understanding of the parties relating to the sale of the Goods and/or provision of the Services, as applicable, and shall be incorporated in all work orders and authorizations unless otherwise so stated therein. These Terms may be modified by Border States at any time, and updated Terms can be found at [www.borderstates.com](http://www.borderstates.com). Border States will not, under any circumstance, agree or be bound by any provisions, conditions, or agreements which are inconsistent with, contrary to, additional to or in lieu of or which modify in any manner the following terms and conditions unless an authorized Officer of Border States, in writing, agrees to such provisions, conditions or agreements. Notwithstanding the foregoing, any additional terms on a Purchase Order shall modify these terms, provided such terms are mutually agreed upon in writing by both parties.

### **2. Delivery; Title; Risk of Loss**

Unless otherwise specified, delivery of any Goods shall be DDP at the location set forth in the Order. Vendor agrees to the delivery the Goods and/or Services in the quantities and within the schedule or by the delivery date specified in any purchase order. Time is of the essence with respect to every delivery of the Goods. Title and risk of loss shall transfer upon receipt by Border States.

### **3. Payment Terms**

Vendor shall invoice Border States for all Services and/or Goods as specified in any order. Invoices shall be sent electronically to [apinvoices@borderstates.com](mailto:apinvoices@borderstates.com). Payment terms for all undisputed amounts shall be 2% 10th prox Net 30. Disputed invoices will be discussed and resolved by both parties. Disputed invoices shall be paid within 30 days of resolution of the dispute.

Vendor shall process payments via credit card by supplying Border States an email address and contact information for who will be processing the payments. Payment will then be delivered via email with a secure credit card along with remittance information as invoices are processed. If unable to accept this form of payment, Vendor shall receive payments via ACH by completing the Border States ACH enrollment form.

### **4. Changes in Goods/Services**

Border States may change the scope of Goods and/or Services from time to time. If Vendor's price or schedule will be affected by the change, Vendor must submit a request for a change order, and Border States must approve such change in the scope in writing through the issuance of a change order prior to Vendor re-starting any manufacturing of the Goods or performance of the Services related to such change.

### **5. Returns**

Provided the material is not a special order material, material that is in new and resalable condition shall be returnable for 18 months.

### **6. Cancellation and Delay**

Border States shall have the right at any time to cancel all or any portion of the order and to delay the date of delivery of some or all of the Goods or Services to be supplied hereunder. Unless due to the breach of these Terms by Vendor, if Border States cancels all or any portion of the order, unless the order expressly provides otherwise, Border States shall pay Vendor reasonable unavoidable cancellation charges on which the parties agree, which shall consist solely of documented direct costs for labor and materials for the order expended by Vendor before the cancellation.

### **7. Warranty**

Vendor warrants for a period of eighteen (18) months from date of delivery, or longer as provided by the Vendor, that the products and services furnished will be (i) provided in conformance with all specifications and other descriptions and requirements set forth in the Purchase Order; (ii) performed in accordance with standards of care, skill and diligence consistent with recognized and sound industry practices, procedures, and techniques; (iii) free from defects in design, materials and workmanship; (iv) merchantable and in full conformity with any stated specifications; (v) fit for intended use; (vi) conveyed with free and clear title; and (vii) free of the rightful claim of any person by way of infringement (including, but not limited to patent or copyright infringement) or the like.

### **8. Indemnity**

Each party shall defend, indemnify and hold harmless the other party, its officers, directors, agents, employees, contractors, and assigns from and against any and all claims, damages and losses, including reasonable attorney's fees, except to the extent such claims, damages and losses are attributable to the negligence or willful misconduct of the indemnified party. Each party's obligations under this paragraph shall extend to the acts and omissions of its employees, contractors, subcontractors, and

agents. Vendor shall defend, indemnify and hold harmless Border States from any and all third party claims, damages and losses, including reasonable attorney's fees, except to the extent the claims, damages and losses are the result of Border States' negligence or willful misconduct.

## **9. Insurance**

Vendor shall provide and maintain liability and property damage insurance so as to provide protection and indemnification against any and all such claims or suits in connection with the Products and/or services which is the subject of this Agreement. All insurance policies provided and maintained by Vendor shall be underwritten by insurers which are rated A.M. Best A- or higher. Vendor shall furnish to Border States certificates issued by insurance companies acceptable to Border States showing policies carried and the limits of coverage as follows:

- a. Workers' Compensation Insurance for Vendor's employees to the extent of statutory limits and Occupational Disease and Employer's Liability Insurance for not less than \$1,000,000 each accident.
- b. Commercial General Liability Insurance, including but not limited to Products and Completed Operations and Blanket Contractual Liability, as applicable to Vendor's obligations under this Agreement with limits not less than \$2,000,000 per occurrence and \$2,000,000 general aggregate. Coverage must be on an occurrence form. Limits may be satisfied with a combination of primary and excess coverage.
- c. Automobile Liability Insurance for all owned, non-owned and hired automobiles with limits not less than \$1,000,000 combined single limit.
- d. Excess/Umbrella Insurance in the amount of \$5,000,000.

Border States shall be named as Additional Insured on all policies of insurance required in subsections 'b' through 'd', and a waiver of subrogation in favor of Border States shall be provided. Such insurance provided by Vendor shall be primary and non-contributory.

## **10. Confidentiality**

Both parties are obliged to keep strictly confidential all information (written or verbal), including plans, drawings, documents, and know-how furnished by the other party unless such information and data are a matter of common knowledge and a part of the public domain. If information is shared with employees or third parties to properly perform the requirements of this Agreement, such parties shall be required to keep information confidential.

## **11. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

1. Vendor certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
  - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1.b. of this certification; and
  - d. (Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where Vendor is unable to certify to any of the statements in this certification, Vendor shall provide Border States an explanation in writing.

## **12. Certification Regarding Lobbying**

1. Vendor certifies to the best of its knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of Vendor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, Vendor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. Where Vendor is unable to certify to any of the statements in this certification, Vendor shall provide Border States an explanation in writing.

### **13. Certification Regarding Compliance with Applicable Laws**

Vendor certifies that Vendor complies with any and all applicable Federal, State and Local laws in the United States and any other country where Vendor sources or manufactures materials, including but not limited to those relating to import and export laws, hazardous materials, environmental, and labor (including, but not limited to, anti-discrimination, minimum age of employment, forced labor, and working conditions), and all applicable industry codes and standards (collectively, "Laws").

### **14. Governing Law**

These Terms shall be governed by and construed in accordance with the laws of the State of North Dakota, without regard to any State's conflicts of law principles. Any action based on these Terms shall be brought either in a State Court or United States District Court located in Cass County, North Dakota. Vendor hereby waives venue in agreeing and consenting to venue in Cass County, North Dakota, and specifically and expressly agrees to jurisdiction of said Courts. Each party knowingly, voluntarily, irrevocably, and unconditionally waives any and all right to trial by jury in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

### **15. Remedies; Waiver; Survival**

All of Border States' rights and remedies are cumulative with, and non-exclusive of, any and all rights and remedies available hereunder, at law or otherwise. Neither party's failure to enforce one or more of the terms or conditions of these Terms, or to exercise any right or privilege in these Terms, or the waiver by Border States of any breach of the terms and conditions of these Terms, shall not be construed as thereafter waiving any such other terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce has occurred. All terms and conditions herein shall survive the termination of these Terms.