

ANA SOURCING, LLC GENERAL AND SPECIFIC TERMS AND CONDITIONS - "AGREEMENT"

1. TERMS OF AGREEMENT

As a condition of transacting any business with ANA with respect to any materials, equipment, goods, supplies, deliverables, and/or services (including but not limited to any design, engineering, installation, testing, evaluation, training, construction, maintenance, repair, management, consulting, data analysis) sold, distributed, supplied, leased, licensed, loaned, installed, assembled, manufactured, shipped, delivered, and/or otherwise provided (collectively, "Products"), You, identified herein as Vendor and Vendor's owners, officers, managers, employees, servants, representatives, agents, independent contractors, parents, subsidiaries, affiliates, divisions, and companies (collectively, "Vendor") agree that any request for quotation by ANA, Purchase Order, purchase of Products and/or confirmation or acceptance thereof by ANA, shipment and delivery to ANA of Products, and any and all disputes between ANA and Vendor of any nature whatsoever, whether based in contract, warranty, tort, statute, common law, and/or otherwise, shall be subject to and governed exclusively by this Agreement in its entirety (including any written amendment thereto provided same is executed by a duly-authorized representative of ANA), together with these General and Specific Terms and Conditions ("Terms and Conditions"), and all exhibits, appendices, attachments, schedules, and supplements hereto (each of which is incorporated herein by reference). **ANY REQUEST FOR QUOTATION AND/OR PURCHASE BY ANA IS MADE EXPRESSLY CONDITIONAL UPON VENDOR'S ASSENT TO THE TERMS AND CONDITIONS HEREIN, WITHOUT MODIFICATION THERETO BY VENDOR.** Any attempt by Vendor to unilaterally impose terms and conditions which are additional to, contradict, and/or differ in any way from the Terms and Conditions set forth herein (even if they do not contradict or materially alter the Agreement and/or Terms and Conditions) in any document(s) and/or oral, written, and/or electronic communications between ANA and Vendor, including but not limited to those contained in Vendor's quotations, estimates, proposals, submittals, invoices, contracts, agreements, terms and conditions, plans, drawings, specifications, and/or other documents, are hereby rejected by ANA and displaced by these Terms and Conditions, and shall not become part of the Agreement between Vendor and ANA, unless agreed to by ANA in a writing manually signed by a duly-authorized signatory of ANA. Vendor agrees that evidence of (a) ANA's words and/or conduct prior to, contemporaneous with, and/or subsequent to the Agreement, and/or (b) any purported course of dealing, course of performance, and/or usage of trade between ANA and Vendor, which tends to or does contradict these Terms and Conditions shall not be relevant to interpret or supplement same. Should it be alleged or established by a court of competent jurisdiction that Vendor's terms and conditions may apply and conflict with ANA's Terms and Conditions herein, then ANA's Terms and Conditions shall prevail. ANA reserves the right to, at any time in its sole discretion, change these Terms and Conditions. ANA may terminate the Agreement at any time, for any reason or no reason, with or without cause, and any claim made by Vendor with respect to same shall be subject to Vendor's unconditional duty to mitigate its damages (which shall serve to offset any recovery from ANA), and be limited to the lesser of: (a) two percent (2%) of the value of the Purchase Order, or (b) twenty-five percent (25%) of Vendor's lost profits from the Purchase Order, which is Vendor's burden to prove. Vendor's obligations under this section shall survive any termination of these Terms and Conditions and/or any other agreement(s) between the parties.

2. QUOTATIONS; ACCEPTANCE OF ORDERS

Requests for quotations by ANA shall be deemed to be offers by ANA to purchase the Products described therein subject to these Terms and Conditions, and acceptance of such offers is expressly conditioned upon acceptance by Vendor of all of these Terms and Conditions, without modification by Vendor. These Terms and Conditions shall be deemed to be accepted by Vendor (at which time a legally binding contract between ANA and Vendor shall be created) as of the earliest date on which Vendor does any of the following: (1) signs the Purchase Order (without any attempted modification of the Terms and Conditions herein); (2) agrees to or expresses an intent to provide the Products to ANA in writing, orally, and/or by conduct; (3) consents to the Agreement via electronic signature, which may include responding affirmatively to an email indicating Vendor's acceptance of same; (4) commences providing all or any part of the Products, (5) accepts any partial and/or full payment by ANA for the Products; and/or (6) gives any other expression of acceptance. ANA's purchase of Products from Vendor is expressly conditioned upon Vendor's unconditional assent to these Terms and Conditions, without modification by Vendor. ANA specifically rejects any "open price" term unless specifically agreed to in a writing manually signed by a duly-authorized representative of ANA. All quotes provided to ANA for Products shall not be subject to an increase in price, or modification of any other terms specified by ANA (all of which shall be deemed material terms), for a minimum of thirty (30) calendar days after ANA receives such quote, unless agreed to in a writing signed by ANA; in the event Vendor is able to afford ANA a decrease in price and/or other potentially more favorable terms, ANA shall receive the full benefit of such price reduction on any undelivered Purchase Order and any subsequent order(s) placed. ANA reserves the right to revoke its Purchase Order at any time prior to Vendor's acceptance thereof.

3. DELIVERY; RISK OF LOSS

Unless agreed to by ANA in a writing manually signed by a duly-authorized signatory of ANA, freight terms shall be F.O.B. Destination, Freight Prepaid. Title and risk of loss to Products shall remain with Vendor until proper delivery (of which reasonable advanced notice by Vendor shall be provided) to the loading dock or other facility of ANA, and/or an authorized supplier of ANA, during normal business days and hours, and subject to ANA's rights of inspection and rejection (in whole or in part) for any nonconformance, even if minor. For a reasonable time after proper delivery and before acceptance, ANA shall have the right to inspect and test the Products for conformance with ANA's Purchase Order and these Terms and Conditions, and ANA will notify Vendor if the Products fail to so conform. ANA will endeavor to provide reasonably prompt notice of any claim(s) related to nonconformance with ANA's Purchase Order(s) and/or the Terms and Conditions herein, defect, and/or other issue related to the Products; however, Vendor agrees that ANA need not strictly comply with N.J.S.A. 12A:2-605. Payment by ANA prior to ANA having a reasonable opportunity to inspect the Products for conformance shall not be deemed an acceptance of such Products and is without prejudice and with a full reservation of rights as to any and all claims that ANA may have against Vendor. At its sole option, ANA may reject and return to Vendor any Products found not to conform, which shall remain at Vendor's risk. ANA may also, at its sole option, demand that Vendor promptly correct, repair, replace, and/or otherwise remedy any nonconforming Products at Vendor's sole expense. Vendor is responsible for all shipping and handling fees, customs, clearance, and related amounts. Provided ANA agrees in writing, delivery shall be made at such place(s) and at such date(s) and time(s) as ANA may specify in accordance with ANA's instructions as to manner of shipment, carriers, routing, prepayment of freight, and related matters. If the Products are delivered and ANA determines in its sole discretion that it is unable and/or unwilling to accept same due to some defect or nonconformance therein or otherwise due to no fault of ANA, ANA may place such Products in storage at Vendor's expense and for Vendor's account until Vendor properly accepts return and/or the parties mutually agree upon their disposition, during which time the risk of loss to Products shall remain with Vendor. Tender of delivery shall not be deemed satisfied through partial or substantial performance by Vendor; rather, Vendor must make full tender of Products conforming in all respects to ANA's Purchase Order. A partial and/or nonconforming delivery will not entitle Vendor to payment. If delivery is by common carrier, only proper delivery to ANA pursuant to ANA's instructions shall constitute delivery to the ANA and, before such proper delivery, Vendor shall bear the risk of any loss or damage. ANA's count(s) shall be conclusive for all shipments. No common carrier is to be deemed an agent of ANA. Any proposed substituted performance of any material or non-material terms of the parties' Agreement is subject to ANA's pre-approval in a writing signed by a duly-authorized representative of ANA. In Vendor's performance of the Agreement, time is of the essence and ANA is relying upon the promised delivery date and/or other promises in connection with the Products made by Vendor. Vendor's obligations under this section shall survive any termination of these Terms and Conditions and/or any other agreement(s) between the parties.

4. PAYMENTS

Unless otherwise agreed to by ANA in a writing manually signed by a duly-authorized signatory of ANA, ANA agrees to pay any proper, valid, and undisputed invoice (which shall contain sufficient detail regarding the material terms of its purchase such as an invoice number, payment terms, total invoice amount, "remit to" address, purchase order number, freight terms, description of each item being invoiced, quantity, unit item cost, extended cost by item, any other costs and/or fees, and Vendor's contact information and email address) within thirty (30) days of the invoice date subject to any appropriate withholding, discount, deduction, credit, offset, and/or recoupment to which ANA may be entitled with respect to Vendor for any defect, non-conformity, storage fee, cover, and/or other dispute related to the Products. Any attempt by Vendor to impose C.O.D. terms is expressly rejected. ANA may at its discretion make payment by any commercially-accepted method. If Vendor wishes to dispute the validity and/or amount of any payment and/or non-payment by ANA, Vendor must notify ANA in writing within ten (10) days of the date Vendor claims payment was due, otherwise, Vendor will be deemed to have fully accepted the amount of such payment by ANA in full satisfaction of ANA's obligations, and same shall be deemed an accord and satisfaction and waiver of any right by Vendor to seek any further amounts from ANA. To the extent Vendor makes and/or attempts to make any claim and/or commence any judicial action, arbitration, or other legal proceeding against ANA and ANA prevails in whole or in part, Vendor agrees to pay all of ANA's pre-litigation and litigation costs and expenses incurred in connection with same, including but not limited to attorneys' fees, costs, and expert fees. Vendor shall not require any prepayment and/or deposit in connection with ANA's purchase of any Products; however, to the extent that ANA makes any such prepayment and/or deposit, same shall at all times be refundable unless and until Vendor fulfills ANA's Purchase Order strictly in accordance with the terms of same and these Terms and Conditions. Vendor shall not attempt to charge ANA any fees in connection with any refund, restocking fees, boxing, packing, transportation, insurance, container charges, and similar charges unless ANA agrees to same in a writing signed by a duly-authorized representative of ANA. Vendor's obligations under this section shall survive any termination of these Terms and Conditions and/or any other agreement(s) between the parties.

5. VENDOR'S WARRANTY

In addition to any express and/or implied warranties accompanying the Products purchased by ANA, for a period of one (1) year from the date of delivery of fully conforming Products, Vendor warrants that: (a) the Products will conform in all respects to the descriptions contained within ANA's Purchase Order; (b) the Products are merchantable, are fit for any particular purpose, will be free from defects in material and/or workmanship, will have uninterrupted and/or error-free operation, and/or are correct, accurate, reliable, and/or otherwise; (c) the Products comply with all applicable federal, state, and local laws and regulations, and industry standards; (d) the Products will not and do not infringe upon, misappropriate, and/or violate any intellectual property and/or proprietary rights of any third party; and (e) upon passing of title to the Products to ANA in accordance with these Terms and Conditions, the Products are free and clear of any encumbrances, liens, and/or similar claims by Vendor and any third parties, and ANA and its downstream customers and end-users will have good and marketable title to the Products. If any Products shall prove defective or otherwise fail to conform to the Agreement and/or the Terms and Conditions herein (including this "Vendor's Warranty"), Vendor shall at its sole effort and expense, provide ANA with an equal or better replacement, suitable repair, credit, and/or a refund for the Products, which ANA shall select in its sole discretion. Vendor agrees that any applicable statutes of limitations are hereby reduced so that any such legal actions by Vendor against ANA must be brought within one (1) year from accrual of such action, and tolling principles such as the discovery rule shall not apply. In the event this reduction of statutes of limitations is unenforceable, Vendor agrees to the shortest possible limitations period permitted by applicable law. **IN NO EVENT SHALL ANA BE LIABLE FOR LOST PROFITS, INCIDENTAL, INDIRECT, DIRECT, CONSEQUENTIAL, SPECIAL, TREBLE, EXEMPLARY, PUNITIVE, STATUTORY AND/OR SIMILAR DAMAGES, LOSS OR EXPENSE.** Vendor's obligations under this paragraph shall survive any termination of the Agreement.

6. INDEMNIFICATION

Vendor shall indemnify, hold harmless, and defend ANA and its distributors, suppliers, affiliates, and/or licensors, as well as the board members, officers, employees, servants, agents, predecessors, successors, customers, end-users, assigns, contractors, insurers and attorneys of ANA and its distributors, suppliers, affiliates, and/or licensors from and against any and all damages, liability, claims, losses, cover, and expenses of any nature whatsoever (including reasonable attorneys' fees, court costs, and out-of-pocket expenses) arising out of or resulting in any way from: (1) ANA's distribution, sale, re-sale, and/or supply of the Products; (2) modification of any Products by Vendor; (3) use of the Products in combination with other products; and/or (4) claims by customers and/or end-users of Vendor, ANA, and/or third parties against ANA claiming any loss, damages of any kind, lost profits, lost opportunity, attorneys' fees, and/or relief of any nature—including but not limited to allegations of ANA's own negligence—due to, arising from, and/or in connection with the Products. Judicial proceedings need not have been instituted to trigger Vendor's obligation to indemnify ANA; rather, the fact that a claim is made or more likely than not will be made is sufficient. Vendor shall use counsel reasonably satisfactory to ANA to defend the foregoing indemnified claims. Vendor's obligation to indemnify ANA shall survive any termination of these Terms and Conditions and/or any other agreement(s) between the parties.

7. PAYMENT SECURITY AND CYBER SECURITY

By entering into an Agreement with ANA, Vendor is representing to ANA that Vendor has established and maintains a secure method or platform for receiving Purchase Orders and payment from ANA to prevent incidents including, but not limited to, the unauthorized diversion or interception of any confidential information and/or payment by ANA, social engineering, impersonation, funds transfer fraud, wire fraud, mail fraud, telecom fraud, data misuse, embezzlement, ransom, and/or extortion (collectively "Payment Incident"). Any transactions contemplated by this Agreement that require either party to access sensitive information, or connect to any network, system, software, or other technology, of the other party, the parties agree that such access or connection will be used for the limited purposes set forth in this Agreement. Vendor agrees to ensure, in accordance with cybersecurity industry best practices, to prevent cybersecurity incidents from affecting ANA, including, but not limited to, those involving the compromising of Vendor's Information Technology ("IT") Systems, and/or experiencing any material systems failure, data loss or theft, unauthorized access, security breach or failure, due to any cybersecurity incidents including, but not limited to: viruses; worms, Trojan Horses, malware; ransomware; spoofing; phishing; whale-phishing; spear-phishing; social engineering; denial of service attacks; man-in-the-middle attacks; and password attacks (collectively, "Cybersecurity Incident"). Vendor shall have in place reasonable technical and organizational measures (including policies, procedures and training on these measures) to manage the ability of its network and information systems to resist, at a reasonable level of confidence, a Cybersecurity Incident. Vendor shall promptly notify ANA, in writing, about any security incident affecting or which may affect any IT infrastructure or data or facilities owned, leased or used by Vendor, which may affect the Agreement and/or ANA's IT infrastructure within 24 hours after Vendor becomes aware of or suspects that a Cybersecurity Incident has occurred. Vendor shall be liable for and indemnify, hold harmless, and defend ANA from and against, and shall pay any and all damages and actual, consequential, and incidental losses (including attorneys' fees) sustained and/or incurred by ANA, including but not limited to in connection with any claim, suit or proceeding brought by ANA against Vendor and/or any other persons or entities, as well as in connection with any claim, suit or proceeding brought by Vendor and/or any third party against ANA, as a result of any failure by Vendor to comply with the security obligations set forth in this Agreement relating to protection against fraudulent or other inappropriate or unauthorized use of or access to the systems and/or networks described herein, and/or any Payment Incident and/or Cybersecurity Incident. Vendor's obligations under this paragraph shall survive any termination of these Terms and Conditions and/or any other agreement(s) between the parties.

8. GENERAL

- (i) The Agreement(s), Purchase Orders, these Terms and Conditions, and/or any other dealings between and/or affecting ANA and Vendor will in all respects be construed and be given legal effect in conformity with the laws of the State of New Jersey, U.S.A., regardless of any conflicts-of-law and/or choice-of-law principles. ANA and Vendor hereby agree that any legal action deemed necessary by either party hereto shall be brought exclusively in the New Jersey Superior Court for Camden County, New Jersey, or the Camden Vicinage of the United States District Court for the District of New Jersey, and hereby consent to the personal jurisdiction of such court in any such action over the parties hereto and waive any objection to the laying of venue of any suit, action or any proceeding in such courts. **ANY CONTRACTUAL TERM AND/OR CONDITION PURPORTING TO REQUIRE MEDIATION AND/OR ARBITRATION (WHETHER BINDING OR NON-BINDING) IS HEREBY REJECTED BY ANA, superseded by these Terms and Conditions, and shall not become part of the agreement between Vendor and ANA.** The parties expressly agree that the provisions of the U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement or these Terms and Conditions.
- (ii) These Terms and Conditions supersede all prior discussions and writings and, along with ANA's Purchase Order, constitute the entire Agreement between ANA and Vendor with respect to the terms and conditions governing same. These Terms and Conditions shall be deemed incorporated into and made a part of any separate agreement between ANA and Vendor.
- (iii) No purported change, modification, rescission, discharge, abandonment, and/or waiver of these Terms and Conditions shall be binding upon ANA unless made in writing and manually signed on its behalf by an authorized representative of ANA. Any purported change, modification, rescission, discharge, abandonment, and/or waiver of these Terms and Conditions shall not be deemed binding upon ANA if made by e-mail, text message, and/or other electronic means.
- (iv) The invalidity of any provision of these Terms and Conditions shall not affect the enforceability of any other provisions thereof, unless such invalidity shall cause the parties' Agreement to fail of its essential purpose(s).
- (v) The remedies herein are cumulative, and in addition to any other remedies available at law or equity available to ANA.
- (vi) No failure by ANA to insist upon and/or enforce strict compliance with any provision of these Terms and Conditions shall be deemed to constitute a waiver of the right to do so in the future, or of any breach of said term(s) and/or condition(s), unless such purported waiver strictly complies with the requirements of these Terms and Conditions.
- (vii) Vendor acknowledges and agrees that ANA and its employees and agents are independent contractors and not agents or employees of Vendor. Nothing herein shall be deemed to create an employment, joint venture, agency, or partnership relationship between the parties.
- (viii) Vendor agrees not to use and/or disclose ANA's confidential information, trade secrets, proprietary data and/or documents, and/or similar sensitive commercial and/or business information and documents to anyone.
- (ix) Vendor hereby grants to ANA a non-exclusive, royalty-free right to use Vendor's trademarks and logos in ANA's advertising and promotional materials to truthfully represent that ANA sells, distributes, uses, and/or has available Vendor's Products.
- (x) Neither these Terms and Conditions nor any agreement(s) between the parties are to be construed as an exclusive contract or a requirements contract, and ANA makes no guarantee that it will purchase Vendor's Products at any particular time(s) and/or in any quantity or volume.
- (xi) These Terms and Conditions shall be binding upon and inure to the benefit of the parties hereto and their respective past, present, and future owners, board members, directors, officers, executives, principals, trustees, shareholders, stockholders, partners, members, employees, affiliates, companies, entities, divisions, predecessors-in-interest, successors-in-interest, parents, subsidiaries, sister companies, heirs, administrators, personal representatives, executors, assigns, agents, insurers, attorneys, and/or representatives. Vendor shall not assign the Agreement without the express, prior written consent of ANA. The parties' Agreement shall not be construed to confer any rights or remedies upon any third party.
- (xii) Neither party shall be liable for any failure or delay in performing its obligations under the Agreement and/or these Terms and Conditions due to unforeseen causes beyond its reasonable control including, but not limited to: acts of God, war, insurrection, riots, strikes, fires, floods, embargoes, terrorism, natural catastrophe, epidemics, pandemics, and/or other similar events or circumstances. ANA shall have no obligation to make any payment to Vendor during the period of failure or delay for any Products affected by such an event.
- (xiii) With respect to any government or public sector Vendor, if any laws which may apply to Vendor would result in any provision of the Agreement or these Terms and Conditions being deemed unenforceable against Vendor, same will be deemed severable from this Agreement and all other provisions will remain in full force and effect.
- (xiv) The Agreement and these Terms and Conditions may be executed in counterparts, each of which shall constitute one and the same instrument.
- (xv) Any inconsistency between the Agreement shall be resolved in the following order: (1) any valid Amendment to the Agreement; (2) the Agreement; and (3) these Terms and Conditions.
- (xvi) Vendor's obligations under this section shall survive any termination of the Agreement.