

Tendeg Terms and Conditions

Rev C

1. DEFINITIONS.

“Contract” these terms and conditions, together with the purchase order, and any other attachments expressly included on the purchase order.

“Seller” means the party providing the product or services and identified on the face of the purchase order.

“Tendeg” is the buyer identified on the face of the purchase order.

“Work” the product, service, or deliverable being exchanged for consideration under this Contract

2. ACCEPTANCE OF CONTRACT/TERMS & CONDITIONS This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties. Seller's acknowledgment, acceptance of payment, or commencement of performance, shall constitute Seller's unqualified acceptance of this Contract. Unless expressly accepted in writing by Tendeg, additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment are objected to by Tendeg and have no effect. The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Contract.

3. TERM The initial term of this Contract commences on the Effective Date and continues through the period of performance or final delivery date set forth on the Purchase Order, unless otherwise terminated as set forth herein.

4. PAYMENTS, TAXES, AND DUTIES. Unless otherwise provided for in the Purchase Order, terms of payment shall be net thirty (30) days from Tendeg's receipt of Seller's proper invoice. Any dispute over an invoice must be made within thirty days of receipt. Payment shall be deemed to have been made as of the date of mailing Tendeg's payment or electronic funds transfer. Unless otherwise specified in the Purchase Order, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

5. INDEPENDENT CONTRACTOR RELATIONSHIP. Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform Work under this Contract shall be Seller's employees exclusively without any relation whatsoever to Tendeg. Nothing in this Contract shall be deemed to create any association, partnership, joint venture or relationship of principal and agent, or employer and employee between the parties hereto, or to provide either party with the right, power or authority, whether expressed or implied, to create any such duty or obligation on behalf of the other party.

6. INSURANCE.

(a) Seller and its subcontractors shall maintain for the performance of this Contract the following insurances:

(1) Workers' compensation insurance meeting the statutory requirements where Work will be performed;

(2) Employer's liability ("EL") in the amount of \$1 million per each accident or per each employee for disease;

(3) Commercial general liability ("CGL") including Products Liability and Completed Operations liability in the amount of \$1 million per occurrence and \$2 million in the aggregate annually; and

(4) In the event that Seller, its employees, agents, or subcontractors enter the site(s) of Tendeg or its customers for any reason in connection with this Contract, then Seller and its subcontractors shall maintain Automobile liability ("AL") insurance covering third party bodily injury and property damage with a minimum of \$1 million per occurrence limit.

(b) SELLER shall provide Tendeg thirty (30) days', advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance, provided however such notice shall not relieve Seller of its obligations to maintain the required insurance. Seller shall have its insurers name Tendeg as an additional insured on the CGL and AL, if applicable per (a)(4) above, policies for the duration of this Contract. If requested, Seller shall provide a "Certificate of Insurance" evidencing Seller's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Tendeg and is not contributory with any insurance which Tendeg may carry. "Subcontractor" as used in this clause shall include Seller's subcontractors at any tier. Seller's obligations herein for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Contract.

7. **WARRANTY.** Seller warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon delivery and extend for a period of one (1) year. If any nonconforming Work is identified within the warranty period, Seller, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work, return of nonconforming Work, and reperformance of Work shall be at Seller's expense. If repair, or replacement, or reperformance of Work is not timely, Tendeg may elect to return, reperform, repair, replace, or reprocure the non-conforming Work at Seller's expense, only after notice to Seller with the opportunity to cure. All warranties shall run to Tendeg and its customers.

8. **INDEMNITY.** Seller shall defend, indemnify, and hold harmless Tendeg, its officers, directors, employees, consultants, agents, affiliates, successors, and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of

litigation and/or settlement, and court costs, arising from any negligent act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

9. **DISPUTES.** All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by Tendeg. Seller shall have the right to suspend performance in the event that Tendeg is past due beyond applicable grace periods for any payments then due.

10. **CHANGE IN CONTROL OF SELLER.** Prior to a potential change in control of Seller and at least forty-five (45) days prior to the proposed effectiveness of such change in control, Seller will promptly notify Tendeg in writing thereof, and provide the identity of the potential new controlling party and information on such party and the transaction as Tendeg may request, consistent with applicable law and confidentiality restrictions.

11. **CHANGES**

- a. Tendeg's subcontract or procurement representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.
- b. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, Tendeg shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly.
- c. Seller must assert its right to an equitable adjustment under this clause and substantiate the claim with within twenty-one (21) days from the date of receipt of the written change order from Tendeg. If Seller's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, Tendeg shall have the right to prescribe the manner of disposition of the property.
- d. Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse Seller from proceeding without delay in the performance of this Contract as changed.

12. **FORCE MAJEURE.** Neither party shall be considered in default of its performance of any obligation hereunder (other than an obligation to make any payment due hereunder) to the extent that performance of such obligation is prevented or delayed by any cause beyond such party's reasonable control, including any act of God, act, failure to act, or delay in acting on the part of any governmental authority, governmental priorities, strikes or other labor difficulties, accidents or disruptions such as fire, explosion, terrorism, flood, epidemics, pandemics, unanticipated breakdown, failure or delay of third

party essential raw materials, parts or services, or civil disturbance, or other causes beyond such party's reasonable control whether similar to or different from those stated herein (each, a "**Force Majeure Event**"). If any Force Majeure Event does arise, occur, or result, the party affected thereby shall use commercially reasonable efforts to minimize the consequences of such event and to overcome such event as soon as reasonably possible. A party desiring to rely upon any Force Majeure Event as an excuse for failure, default, or delay in performance shall provide the other party with prompt written notice of the facts giving rise to that event when it arises and of the cessation of that event when it ceases to exist.

13. STOP WORK

- a. Seller shall stop Work for up to ninety (90) days in accordance with any written notice received from Tendeg, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Stop Work notice during the period of work stoppage. Seller shall continue all Work not stopped.
- b. Within such period, Tendeg shall either terminate in accordance with the provisions of this Contract or resume the stopped Work by written notice to Seller. In the event of continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within twenty one (21) days after date of notice to resume work.

14. TERMINATION.

(a) Termination for Convenience. Tendeg may terminate the Purchase Order in whole or in part, in its sole discretion, and without reason, penalty or prejudice, upon written notice to Seller. Upon receipt of any termination notice, unless otherwise specified in the termination notice by Tendeg, Seller shall thereafter not incur additional costs or expense beyond the effective date of termination. Seller shall deliver all work in process associated with the terminated effort to Tendeg and Tendeg shall pay to Seller actual and reasonable costs for the terminated effort, which costs, when added to all other amounts paid and payable hereunder shall not to exceed the price of the Purchase Order. Thereafter, neither party shall have any further or continuing liability or obligation to the other as to the terminated portions of the Purchase Order.

(b) Termination for Cause. Any of the following shall constitute a basis for termination for cause, effective immediately upon written notice from the Tendeg to Seller, subject to any applicable cure period:

- (i) A default in Seller's performance of an obligation under this Contract, if such default continues for more than thirty (30) days after written notice of default is provided by the other party.
- (ii) If Seller becomes the subject of a bankruptcy or insolvency proceeding; files a voluntary petition in bankruptcy; enters into an arrangement with its creditors; applies for or consents to the appointment of a receiver or trustee of itself or its property; makes an assignment for the benefit of creditors; or suffers or permits the entry of an order

adjudicating it to be bankrupt or insolvent or appointing a receiver or trustee of itself or its property.

(iii) If Seller or Seller's employees or representatives knowingly makes any false statements to Tendeg or Tendeg's customer herein or in the performance of its obligations hereunder, or commits a criminal act, in either case that damages Tendeg.

(c) In the event of termination pursuant to sub-clauses 14(b) above, Tendeg shall be entitled to a refund by Seller of all payments made by Tendeg for the terminated work.

15. **ASSIGNMENT.** Seller may not assign or delegate this Contract, or any rights, duties or obligations hereunder, without the prior written approval of Tendeg.

16. **SEVERABILITY.** If for any reason a court of competent jurisdiction finds any provision of this Contract or portion thereof unenforceable, that provision or portion thereof shall be enforced to the maximum extent permissible so as to give effect to the intent of the parties and the remainder of the Contract shall continue in full force and effect.

17. **NO WAIVER.** No failure or delay by a party to exercise any right, remedy or power under this Contract or to insist on strict compliance by another party with any obligation under this Contract, and no custom or practice of the parties at variance with the terms of this Contract, will constitute a waiver of the right of a party to demand full compliance with this Contract.

18. **ORDER OF PRECEDENCE.** Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) face of the Purchase Order and/or Task Order (2) Any parent contract flowdown document (3) these terms and conditions and (4) the Statement of Work, if applicable, and (5) any other document expressly included on the purchase order.

19. **GOVERNING LAW, JURISDICTION.** This Contract is governed by the laws of Colorado, without regard to any conflict of laws principles. The parties agree that any action or proceeding commenced under or with respect to this Contract shall be brought only in the state courts located in Boulder, Colorado, and the parties irrevocably consent to the jurisdiction of such courts and waive any right to alter or change venue, including by removal.

20. **SURVIVABILITY.** All rights, obligations, and duties hereunder, which by their nature or by their express terms extend beyond the expiration or termination of the Contract shall survive the expiration or termination of this Contract.

21. **ENTIRE AGREEMENT.** This Contract contains the entire terms of understanding and agreement between the parties with respect to the subject matter hereof, supersedes any written or oral communications made prior to the purchase order issuance, and may not be modified in any manner except by an instrument in writing signed by a duly authorized representative of each of the parties. Notwithstanding the foregoing, any confidentiality or non-disclosure agreement previously signed by the parties will remain in effect for the duration noted in the subject confidentiality or non-disclosure agreement.