

Purchase Order Terms and Conditions

1 General

- 1.1 This Purchase Order is issued by Catalina Marketing Corporation ("Catalina") for the purchase of goods, services, or both, as described on the face of this document (collectively, the "Scope"), and is deemed accepted when Supplier returns the acknowledgment copy of this Purchase Order or begins performing, whichever is earlier. These terms and conditions together with the specifications, drawings, or other documents referred to on the face of the Purchase Order, or attached thereto, or any documents incorporated by reference, supersede any prior or contemporaneous communications or representations, whether oral or written, respecting the subject matter of this Purchase Order.
- 1.2 Catalina rejects any additional or inconsistent terms and conditions offered by Supplier at any time. References to Supplier's quotation, bid, or proposal do not imply acceptance of any term, condition, or instruction contained therein. No course of prior dealing or usage of the trade may modify, supplement, or explain any terms used in this Purchase Order. All contract documents related to this Purchase Order are interpreted together as one agreement.
- 1.3 This Purchase Order is non-exclusive and carries no requirement for Catalina to place any orders or purchase any minimum quantities.
- 1.4 Any information supplied by Catalina is the property of Catalina and will not be used by Supplier for any purpose other than for performance of this Purchase Order.
- 1.5 Supplier will perform diligently, efficiently, and carefully, in a good and professional manner, and in accordance with the terms of this Purchase Order, industry standards and applicable laws. Supplier will furnish all skills, labor, supervision, equipment, goods, materials, supplies, transport, and storage required in the course of Supplier's performance.
- 1.6 Supplier will request acceptance from Catalina: i) of Goods (defined below) by completion of delivery; or ii) of Services (defined below) by writing on completion of performance. Other than to start the period for any warranty of limited duration, acceptance does not limit or waive any remedies.

2 Requirements Pertaining to Goods

- 2.1 Supplier warrants that the goods, materials, products, and equipment (the "Goods") supplied in connection with the performance of this Purchase Order will be: (i) without fault, defect, or deficiency; (ii) in new condition upon delivery, unless otherwise specified in the Purchase Order; (iii) fit for use for any purpose specified in the Purchase Order; (iv) in strict conformance with the Purchase Order and any specification, drawing, or other description supplied by Catalina to Supplier and agreed to as part of the Purchase Order, (v) in compliance with all laws; (vi) free and clear of any and all liens or other encumbrances, and (vii) shall not infringe any patent, published patent application, or other intellectual property rights of any third party and not utilize misappropriated third party trade secret information.
- 2.2 Unless otherwise agreed to by the parties in writing, Supplier's warranty for Goods applies to all defects arising within 12 months of Catalina's acceptance of Goods.
- 2.3 Following acceptance by Catalina of the Goods, the warranties set out in this Purchase Order are in lieu of all other warranties expressed or implied by statute, common law, custom, usage, or otherwise.
- 2.4 Unless otherwise specified on the face of the Purchase Order or in a separate agreement, the FOB point is Catalina's location. When the FOB point is Supplier's location, Supplier bears all risk of loss or damage to the Goods and title passes to Catalina upon delivery of the Goods to the carrier designated or approved by Catalina. When the FOB point is Supplier location, Supplier bears all risk of loss or damage to the Goods and title passes to Catalina upon delivery of the Goods at Catalina's location.

The foregoing does not relieve Supplier of any responsibility for hidden damages discovered after acceptance of the Goods. Catalina may direct Supplier to ship the Goods to Catalina or to any third party designated by Catalina.

- 2.5 Title to the Goods will pass to Catalina at the earlier of: (i) risk of loss of and damage to Goods passing to Catalina; or (ii) as Catalina makes payment for the Goods.
- 2.6 Supplier will pack the Goods so that they may be transported and unloaded safely. Supplier represents that, on delivery, the Goods have been accurately described, classified, marked, and labelled, in accordance with the Purchase Order, all applicable laws, and industry standards.

3 Requirements Pertaining to Services

- 3.1 Supplier warrants that all Services supplied relating to the performance of the Purchase Order (the "Services") will be: (i) performed in accordance with this Purchase Order; (ii) fit for use for any purpose specified in this Purchase Order; and (iii) free from any defect or deficiency. Supplier additionally warrants that (a) it possesses the requisite expertise, facilities and equipment necessary and appropriate to perform the Services, (b) the Services will be performed in a safe and workmanlike manner, and (c) the Services will be performed in accordance with the highest standards in the industry.
- 3.2 Unless a different period is specified in the Purchase Order, Supplier's warranty for Services applies to all defects arising within 12 months of Catalina's acceptance of the Services.
- 3.3 Following acceptance by Catalina of the Services, the warranties set out in this Purchase Order are in lieu of all other warranties expressed or implied by statute, common law, custom, usage, or otherwise.

- 4 **Timely Delivery.** Supplier shall perform its obligations under this Purchase Order in a timely manner and in accordance with any applicable timelines. If Supplier has knowledge that anything prevents or threatens to prevent the timely performance of its obligations hereunder, Supplier shall immediately notify Catalina thereof and include all relevant information concerning the delay or potential delay. This notification shall not affect Supplier's obligation to deliver all Services in a timely manner. Time is of the essence for the performance this Purchase Order.

- 5 **Import & Customs.** Supplier assumes all responsibility and liability for any shipments covered by this Purchase Order requiring any government import clearance. If government authorities declare or otherwise impose countervailing duties, antidumping duties, or retaliatory duties on the Goods imported under this Purchase Order, Catalina reserves the right to terminate this Purchase Order under the termination provisions of this Purchase Order. Supplier will be debited for any duties, fees, or freight incurred by Catalina due to Supplier's failure to comply with the terms and conditions of this Purchase Order.

- 6 **Lien Waivers.** Supplier will furnish, upon Catalina's request, waivers by Supplier and all other persons entitled to assert any lien rights in connection with the performance of this Purchase Order and will indemnify Catalina against all costs, loss or liability incurred by Catalina as a result of any failure by Supplier or any other person to comply with this provision.

- 7 **Change Orders and Stop Work Orders.** Catalina may, at any time during the progress of the performance, require additions, deductions, or deviations (all hereinafter referred to as a "Change") from the Scope. Supplier shall not be entitled to any compensation pursuant to or in contemplation of a Change, unless made pursuant to a written Change Order issued by Catalina. Further, Catalina may at any time, and by written notice to Supplier, stop performance of all or any portion of the Scope ("Stop Work Order"). Upon receiving a Stop Work Order, Supplier shall promptly cease further performance to the extent specified and shall promptly

undertake commercially reasonable steps to mitigate any costs associated therewith.

shall provide Catalina with proof of such payments upon demand.

8 Termination

- 8.1 **Termination for Convenience.** Notwithstanding any firm time period or quantity on the face of the Purchase Order, Catalina may terminate this Purchase Order in whole or in part at any time with or without cause for undelivered Goods or unperformed services upon 10 days prior written notice.
- 8.2 **Termination for Breach.** The non-breaching party may terminate this Purchase Order if the other party commits a material breach and fails to remedy the breach within 10 calendar days following receipt of written notice specifying the grounds for the breach. A material breach includes, but is not limited to, late delivery or delivery of nonconforming Goods. If Supplier breaches its obligations to Catalina and Catalina terminates this Purchase Order in whole or in part, Catalina may charge Supplier for any additional cost it incurs in performing Supplier's obligations or in having such obligations performed by a third party. If a termination by Catalina for breach by Supplier is determined to have lacked cause, such termination will be treated as a termination without cause under Section 6.1.
- 8.3 **Insolvency.** The solvent party may terminate this Purchase Order upon written notice if the other party becomes insolvent or if any petition is filed or proceedings commenced by or against that party relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.
- 8.4 **General.** If Catalina terminates this Purchase Order under Sections 6.1, 6.2 or 6.3, Catalina's sole liability to Supplier, and Supplier's sole and exclusive remedy, is payment for Goods received and accepted by Catalina before the date of termination. The payment can be set off against any damages to Catalina. Upon termination, Catalina may require Supplier to transfer title and deliver to Catalina any completed Goods and Catalina will pay the Purchase Order price for those Goods subject to set off against any damages to Catalina. Catalina may also require Supplier to transfer title and deliver to Catalina any or all property produced or procured by Supplier to perform this Purchase Order. Catalina will credit Supplier with the reasonable value of the property, but not more than Supplier's actual cost or the Purchase Order value, whichever is less.

9 Fees

- 9.1 **General.** Catalina shall pay Supplier (a) the fixed fees or (b) the applicable rates set forth on the face of this Purchase Order, in full compensation for Supplier's performance of this Purchase Order.
- 9.2 **Expenses.** Except as provided on the face of this Purchase Order or otherwise expressly agreed to by Catalina in writing, Catalina will not reimburse Supplier for any costs and or other expenses incurred by Supplier in the performance of this Purchase Order.
- 9.3 **Invoicing.** If not otherwise specified on the face of this Purchase Order, Supplier shall render invoices to Catalina after satisfactory delivery and acceptance of the Services. All invoices shall provide a detailed itemization of charges contained therein.
- 9.4 **Payment.** Unless otherwise specified invoices are payable sixty (60) days following Catalina's receipt of an undisputed invoice, subject to Catalina's acceptance of the Goods and/or Services in accordance with the terms of this Purchase Order. In the event Supplier owes money to, or is otherwise obligated to Catalina when the invoice is issued, Catalina may offset such invoices or the sums due, making payment to Supplier only for such balance due.
- 9.5 **Taxes/Assessments.** Supplier shall be responsible for payment of any taxes and/or assessments owing due to the payment of compensation to, or the performance of, Supplier pursuant to this Purchase Order, including, without limitation, any estimated taxes, state unemployment insurance taxes, federal and state income taxes, federal social security payments, and state disability insurance taxes. Supplier

10 Supplier Personnel

- 10.1 Supplier will only use personnel who are properly permitted, qualified, suitably trained, competent, skilled, and experienced in accordance with industry standards and as required by the Purchase Order. Supplier will verify all relevant qualifications and experience of personnel, including all requirements of applicable laws and the Purchase Order.
- 10.2 Supplier is responsible for personnel that it utilizes for the Services, including the direction, transport, payment, board, lodging, permits, and entry credentials which may be required.
- 10.3 At Catalina's request, Supplier will perform at its own expense security background checks and obtain entry credentials for its personnel.
- 10.4 Supplier is responsible for paying all payroll taxes or contributions for Supplier and Supplier's personnel, and shall be liable for failure to do so. Supplier shall indemnify and agrees to hold Catalina harmless from and against any loss, cost, or expense incurred by Catalina due to Supplier's failure to withhold any such taxes or to make such contributions in respect of any fee Catalina pays to Supplier.

11 **Independent Contractor Status.** The relationship of Supplier, and Supplier's professionals, employees, representatives, subcontractors, and other agents, if any, to Catalina shall be that of an independent contractor during the term of this Purchase Order and shall not be deemed to create a partnership or joint venture by or between Catalina and Supplier. Nothing in this Purchase Order is intended or shall be construed to create an employment relationship between Supplier or Supplier's personnel and Catalina, and neither Supplier nor Supplier's personnel shall be entitled to any Catalina benefits, including, without limitation, life insurance, death benefits, accident or health insurance, qualified pension or retirement plans, or other employee benefits. Supplier shall have sole control of the manner and means of performing its obligations hereunder. Catalina shall not be liable for any act or omission of Supplier or of Supplier's personnel.

12 **Use of Subcontractors.** Supplier shall not subcontract the work under this Purchase Order without the express advance written consent of Catalina. If Supplier subcontracts in violation of this provision, such subcontracts are void and Catalina may, at its option, terminate this Purchase Order and shall thereupon be relieved from all liability hereunder to Supplier or its purported subcontractor. Supplier shall be responsible to Catalina for all work performed by any of Supplier's subcontractor(s) at any tier.

13 **Impleader.** Supplier shall not implead or bring any action against Catalina based on any claim by any person for personal injury or death to an employee of Catalina for which Catalina has previously paid or is obligated to pay for workers' compensation benefits to such employee or claimant and for which such employee or claimant could not otherwise bring legal action against Catalina.

14 **No Agency.** Supplier at no time shall hold itself out as an agent, subsidiary, or affiliate of Catalina for any purpose, including reporting to any governmental authority, and shall have no authority to bind Catalina to any obligation.

15 Confidentiality

- 15.1 **General.** Supplier acknowledges that in the course of performance of this Purchase Order, it may be given access to or come into possession of, information that contains trade secrets, proprietary information or data, or other confidential information, including any idea, program, technical, business, competitive, customer or other similar information, provided by Catalina to Supplier in any form or medium, tangible or intangible, that Catalina considers confidential ("Confidential Information"). Confidential Information also includes, without limitation, information, materials, products

or deliverables developed, and documents or other materials created by Supplier, during performance of this Purchase Order. Confidential Information shall not include, or shall cease to include, as applicable, information or materials that (i) were generally known to the public on the Effective Date; (ii) become generally known to the public after the effective date of this Purchase Order, other than as a result of the act or omission of the receiving party; (iii) were rightfully known to the receiving party prior to its receipt thereof from the disclosing party; (iv) are or were disclosed by the disclosing party generally without restriction on disclosure; (v) the receiving party lawfully received from a third party without that third party's breach of agreement or obligation of trust; or (vi) are independently developed by the receiving party.

15.2 Restrictions on Use. All Confidential Information disclosed hereunder must be held in confidence and is subject to the restrictions set forth herein for a period of five (5) years from the date of disclosure of such Confidential Information (the "Confidentiality Period"). During the Confidentiality Period, Supplier shall not (i) disclose any Confidential Information to any third party; (ii) make any use of Confidential Information except as necessary for its performance of this Purchase Order; or (iii) make Confidential Information available to any of its employees or other personnel, including any subcontractors, except those that have agreed, in writing, not to disclose such Confidential Information and have a "need to know" such Confidential Information for the performance of this Purchase Order. The receiving party shall be held to the same standard of care as it applies to its own information and materials of a similar nature, but no less than reasonable care.

15.3 Return of Information. Upon request of Catalina or upon termination of this Purchase Order, Supplier agrees to promptly destroy or return to Catalina at Catalina's request and direction, all Confidential Information, and all copies thereof, held by Supplier.

15.4 Supplier's Information. In the course of performing under this Purchase Order, Supplier shall not provide under, or have provided in contemplation of, this Purchase Order any idea, data, program, technical, business or other intangible information, however conveyed, or any document, print, tape, disc, or other information-conveying tangible article, unless Supplier has the right to do so, and Supplier shall not view any of the foregoing information provided to Catalina as confidential or proprietary, unless otherwise expressly agreed by Catalina in writing.

16 Ownership

16.1 General. All information, including without limitation specifications, samples, drawings, materials, know-how, designs, processes, and other technical, business, or financial information, that: (a) has been or will be supplied to Supplier by or on behalf of Catalina; or (b) Supplier will design, develop, or create in connection with this Purchase Order; as to individual items or a combination of components or both, and whether or not completed, and all derivatives of (a) and (b) that Supplier has or will design, develop or create are deemed to be "Confidential Information" of Catalina. All Confidential Information is work made for hire and made during services rendered. All rights to it belong exclusively to Catalina, with Catalina having the sole right to obtain, hold, and renew, in its own name or for its own benefit, patents, copyrights, registrations, or other appropriate protection. To the extent that exclusive title or ownership rights in Confidential Information may not originally vest in Catalina, Supplier irrevocably assigns transfers and conveys to Catalina all right, title, and interest therein.

16.2 Pre-Existing Elements. With respect to any information, including without limitation specifications, samples, drawings, materials, know-how, designs, processes, and other technical, business, or financial information owned, used, or developed by Supplier prior to or independently from Supplier's engagement hereunder (the "Pre-Existing Elements"), Supplier hereby grants to Catalina a royalty-free,

perpetual, worldwide, non-exclusive right in and license to use, copy, and modify such Pre-Existing Elements.

16.3 Supplier shall cooperate in executing and delivering any written, executed assignments or other applications, and/or documents necessary to give effect to the rights granted to Catalina hereunder. Supplier hereby irrevocably transfers and assigns to Catalina any and all rights to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right existing under the law of any country in the world or under any treaty ("Moral Rights") that Supplier may have in connection with the performance of this Purchase Order and hereby forever waives and agrees never to assert against Catalina any and all Moral Rights Supplier may have therein.

17 Insurance. Supplier agrees it shall carry comprehensive general liability insurance with minimum limits of one million dollars (US\$1,000,000) for each occurrence, commercial excess liability insurance with minimum limits of two million dollars (US\$2,000,000) for each occurrence or Supplier's standard insurance limits, whichever is greater, property damage insurance with minimum limits of one million dollars (US\$1,000,000), and workers compensation insurance at the statutory levels required by the states in which Supplier shall perform the Services including not less than \$1,000,000 employers' liability insurance. Each such policy, with the exception of workers compensation and property damage, shall name Catalina, its officers, directors, employees, agents, and member stations as additional insureds. The property insurance shall name Catalina as a loss payee. Supplier further agrees to send a certificate of insurance evidencing the insurance requirements to Catalina within ten (10) days of execution of this Purchase Order indicating that Catalina is an additional insured and loss payee, and confirming that such insurance meets the requirements set forth herein. Insurance coverage will not be terminated or permitted to lapse without thirty (30) days prior written notice to Catalina. Stated insurance shall be written with a carrier, as defined by the most recent A.M. Best's Report, that holds a Best's Rating of A-VII or higher.

18 Indemnification

18.1 General Indemnity. Supplier shall indemnify, defend, and hold harmless Catalina and its officers, directors, employees, agents, and member stations from and against any and all losses, damages, claims, demands, debts, liabilities, fines, penalties, and expenses (including costs and attorneys' fees) arising from or in connection with (a) the performance of or failure to perform any of the terms, representations and warranties, conditions or covenants set forth herein; (b) any act or omission of Supplier or any persons furnished by Supplier; (c) injuries or death to persons or damage to property, including theft, in any way arising out of or caused by alleged by to have been caused by the Goods provided or services performed by Supplier or any persons furnished by Supplier; or (d) assertions under Workers' Compensation or similar acts made by persons furnished by Supplier.

18.2 Infringement Indemnity. Supplier shall indemnify, defend, and hold harmless Catalina and its officers, directors, employees, agents, and member stations from and against any and all losses, damages, claims, demands, debts, liabilities, fines, penalties, and expenses (including costs and attorneys' fees) arising from or in connection with any claim that the Goods provided or Services performed infringe any patent, copyright, trademark, or any other intellectual property right, private right or proprietary right of a third party, or constitutes misuse or misappropriation of a trade secret of a third party ("Infringement Claim"). Catalina shall notify Supplier in writing of any action brought against Catalina based on an Infringement Claim.

18.3 As requested by Catalina, Supplier will defend or settle any demand, suit, or action arising under Sections 17.1 or 17.2, at Supplier's sole expense and Catalina shall have the right to approve the terms of any settlement or compromise that restricts its rights granted under this Agreement or subjects it to any ongoing obligations. In the event that a final

injunction is obtained against Catalina prohibiting the use of any Proprietary Materials by reason of an infringement, Supplier may, at its option and expense, within sixty (60) days either (a) procure for Catalina the right to continue to use the Proprietary Materials that are infringing, or (b) replace or modify the Proprietary Materials to make the use non-infringing while being capable of performing the same function. If neither option is reasonably available to Supplier, then Catalina, at Catalina's option, may terminate this Agreement and Supplier shall refund to Catalina any amount paid by Catalina pursuant to this Agreement, plus any loss or damages incurred by Catalina, including costs and attorneys' fees. Such termination and/or refund shall not affect Supplier's obligations hereunder.

19 Limitation of Liability. CATALINA IS NOT LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES FROM BUSINESS INTERRUPTION, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, OR LOSS OF USE OF ANY PROPERTY OR CAPITAL) EVEN IF ADVISED, OR OTHERWISE AWARE, OF THE POSSIBILITY OF ANY SUCH DAMAGES.

20 Survival. The obligations of the parties under this Purchase Order that, by their nature, would continue beyond the termination, cancellation, or expiration of this Purchase Order shall survive termination, cancellation, or expiration of this Purchase Order.

21 Governing Law. The laws of the State of Florida govern all matters arising out of or relating to this Purchase Order without giving effect to conflicts of law principles thereof. The parties submit to the jurisdiction of the state and federal courts of the State of Florida for resolving any dispute arising out of or relating to this Purchase Order. The laws of the State of Florida govern all matters arising out of or relating to this Purchase Order without giving effect to conflicts of law principles thereof. The parties submit to the jurisdiction of the courts of the State of Florida, located in St. Petersburg, Florida or Tampa, Florida, and the federal courts of the Middle District of Florida, for resolving any dispute arising out of or relating to this Purchase Order.

22 Compliance with Laws. Supplier and all persons furnished by Supplier shall comply, at their own expense, with all applicable laws, ordinances, regulations, and codes, including the identification and procurement of required permits, certificates, licenses, insurance, approvals, and inspections, in the performance of this Purchase Order and shall indemnify, defend and hold harmless Catalina and its officers, employees, and agents from and against any claims arising from Supplier's failure to so comply.

23 Excusable Delay (Force Majeure). Neither party will be in default for any delay or failure to perform due to causes beyond its control and without its fault or negligence, but any delay or failure to perform caused by the default of a supplier of Supplier will be excused only if (a) it is beyond the control of both Supplier and its supplier(s) and without the fault or negligence of any of them, and (b) the Goods or Services to be furnished cannot be obtained from other sources in sufficient time to permit Supplier to meet its obligations under this Agreement. Supplier's ability to sell Goods or Services at a more advantageous price or Supplier's economic hardship in performing its obligations hereunder will not constitute an excusable delay event. The party affected by an excusable delay will promptly provide written notice to the other, explaining in detail the full particulars and expected duration of the excusable delay, and will use its best efforts to remedy the delay if it can be remedied. If delivery of any Goods is delayed for more than 30 days, Catalina may, without liability, cancel all or any part of this Purchase Order.

24 No Waiver. Any waiver or alleged waiver of any breach or term of this Purchase Order shall not constitute a waiver of any other breach or term hereof.

25 No Assignment. Supplier may not assign any of the rights, interests, or obligations hereunder without the prior written consent of Catalina.

26 Publicity and Identification. Supplier shall not, without Catalina's prior written consent in each instance, engage in publicity related to this Purchase Order, or publish or use any name, any trade name, trademark, service mark, insignia, symbol, logo, or any other designation or drawing of Catalina or its affiliates or subsidiaries in any advertising, sales promotion, press releases, third party communications, or publicity matters without Catalina's prior written approval in each instance.

27 Severability. If any term or provision of this Purchase Order is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the same shall not affect the other terms or provisions of this Purchase Order, but such terms or provisions shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent of the parties herein set forth.