

## BAY SHIP & YACHT CO. PURCHASE ORDER TERMS & CONDITIONS

**1. AGREEMENT:** It is understood and agreed that the following terms and conditions stated in this Terms & Conditions document are applicable to both the sale of goods and/or services to Bay Ship & Yacht Co., hereinafter referred to as (BSY) and Vendor, meaning the person, partnership, corporation or other entity undertaking to supply the goods or services which are subject to the Purchase Order either in its own name or through an authorized agent. The Purchase Order including its exhibits attached thereto or referred to specifically therein, and these Terms & Conditions together constitute the entire agreement between the parties with respect to the subject matter thereof, and no terms or conditions contained in any written or other acceptance or confirmation thereof by Vendor, which are in addition to, or different from, those set forth herein, shall in any way affect or act to modify or amend any of the terms and condition thereof. Vendor's acceptance of the Purchase Order is limited to the terms and conditions thereof, unless Purchaser expressly agrees to any such proposal or term in writing. The Vendor further agrees not to assign or sublet the Work or any portion thereof without the written consent of BSY.

**2. PRIME CONTRACTUAL FLOW DOWN CLAUSES:** The Vendor shall assume toward BSY, so far as the Subcontract Work is concerned, all the obligations and responsibilities which BSY assumed toward the Owner by the Main Contract. The Vendor further agrees that any warranty which BSY owes Owner by virtue of the Main Contract (or which arises by operation of law) and which pertains to the Work, shall be owed to both Owner and BSY by Vendor. Further, the Vendor will be bound by any provisions in the Main Contract for liquidated damages, and shall pay such damages for any delay to the extent caused by, or arising out of the acts or omissions of the Vendor.

**3. CHANGES:** Changes ordered by Purchaser. Purchaser shall have the right to order changes from time to time in the performance required by Vendor under the Purchase Order by issuing a new Purchase Order. No change shall be made by Vendor in its performance unless and until such change is specified in writing in a new Purchase Order signed by a member of Purchaser. Upon receipt of a new Purchase Order, Vendor shall without delay, conform its performance to the new Purchase Order.

**4. TERMINATION:** BSY, in its sole discretion, may terminate this Purchase Order for any reason upon ten days' prior written notice, and upon such termination, (1) BSY shall pay to Vendor, as Vendor's sole and exclusive remedy hereunder, an amount equal to the costs actually incurred by Vendor in accordance with and payable to BSY hereunder for the portion of the services that has been performed by Vendor through the date of such termination and not already paid, and (2) BSY shall take possession of all plans, reports, data, information, drawings, specifications, and other materials, supplies and property theretofore prepared with respect to the services.

**5. SERVICES:** Vendor shall perform the services described herein and shall furnish all personnel, materials, supplies, equipment, tools, labor, research, information and services as and when required to perform the services and all matters reasonably incidental thereto. Vendor shall perform the services in strict compliance herewith and all applicable federal, state and local laws, rules, regulations and orders and shall be of a quality conforming to the best commercial practice for services of this type. The Vendor shall perform all services in a safe manner and in compliance with Exhibit B "General Safety Rules for Subcontractors / Vendors". The Vendor shall inspect all work areas and use its best efforts to prevent accidents, injury or damage to all employees, persons and property.

**6. PERMITS AND APPROVALS:** All necessary permits, bonds, testing, inspection and approval of materials or workmanship by the proper authorities is to be provided and arranged by the Vendor at no additional cost to BSY unless authorized herein.

**7. LIENS:** Vendor shall keep the property free and clear of all liens, security interests, encumbrances, and claims of every nature, including statutory and maritime liens in favor of workmen, materialmen, subcontractors, or others arising by, through, or under Vendor. Vendor shall discharge all such liens and other claims at once. Vendor hereby waives all liens whether possessory or otherwise in its favor which would otherwise attach to the property. Title and risk of loss to the goods shall pass to BSY upon BSY's acceptance of delivery at the place specified on the face hereof.

**8. CARE OF PROPERTY:** At all times during the term of the Purchase Order, Vendor shall protect the Property from any and all damage. At all times while any Property is on Vendor's premises, Vendor shall assume all risk of damage to or loss of the property (or of any machinery, equipment,

materials and outfitting obtained or intended for the Property) from any cause whatsoever except the sole negligence of BSY.

**9. TRANSPORTATION COSTS:** If the Purchase Order calls for payment of any transportation costs by BSY, BSY shall in no event be liable or accountable for any amount in excess of the actual costs of transportation. Vendor shall be accountable for and shall pay any excess transportation costs arising from Vendor's failure to make delivery to the FOB point or to follow shipping instructions furnished by BSY.

**10. WARRANTY:** (a) Warranty for Goods. Vendor warrants that at the time of transfer of title to the goods the Purchaser (1) Vendor has good and marketable title to the goods and the goods shall be free and clear of all defects of title, liens or security interests; (2) the goods are being sold in compliance with the Robinson-Patman Act; (3) the goods are conforming goods and in all respects and are free from defects in workmanship, design and materials; and (4) the goods are merchantable, of the quality specified, and fit for the purposes intended. All implied warranties of the California Commercial Code and warranties implied by usage of trade are reserved by BSY and incorporated herein. If, upon inspection by BSY, or through failure of the goods in use, any defects in workmanship, design or materials appear within 1 year of receipt by BSY, Vendor shall at its expense promptly cause the repair or replacement of all such defects to the satisfaction of BSY. (b) Warranty for Services. Unless the warranty period is extended by the Prime Contract agreement, in case any work done or material furnished shall, within one (1) year from the date of acceptance of the work or materials by BSY, prove defective or deficient, and be so reported to the Vendor within that time, such defects or deficiencies shall, at the Vendor's expense, be made good to the satisfaction of BSY. BSY will, if and when practicable, afford the Vendor an opportunity to correct such defects or deficiencies, such correction shall be effected at the Vendor's expense at such other location or locations and by such other contractor or contractors as BSY may determine.

**11. INSURANCE:** Vendor shall procure and maintain in force the minimum insurance coverages listed in Exhibit A. The foregoing insurance policies shall be issued by insurance companies with an AM Best rating of A- or better and otherwise in all ways acceptable to BSY, and shall be subject to BSY's approval as to limits, deductibles, form and substance. BSY allowing Vendor to commence providing goods without providing the required certificates shall not be deemed to be a waiver of any of BSY's rights with respect to insurance.

If Vendor fails to procure and/or maintain any of the insurance required of it by Exhibit A, it shall indemnify BSY to the extent BSY suffers or incurs loss, damage, liability, or expense which would not have been suffered or incurred except for such failure. If Vendor shall, by any act or omission, vitiate or invalidate any of the aforesaid policies required to be obtained by such party, Vendor shall indemnify BSY to the extent BSY otherwise would have been covered or protected by said insurance. The vendor, on behalf of their insurance carrier, hereby waives any right to subrogation against BSY.

**12. INDEMNITY:** (a) BSY shall indemnify, defend, protect and hold harmless the Vendor and Vendor's directors, officers, employees, agents and representatives, from and against any and all Claims for illness, personal injury or death of any of BSY's directors, officers, employees or agents, including BSY's contracted vessel crew, occurring on Vendor's property or facilities, regardless of fault, including the sole or concurrent negligence of BSY or the Vendor, or their respective directors, officers, employees, agents or representatives.

(b) The Vendor shall indemnify, defend, protect and hold harmless BSY and BSY's directors, officers, employees, agents and representatives, including BSY's contracted vessel crew, from and against any and all Claims for illness, personal injury or death of any of the Vendor's directors, officers, employees or agents occurring on Vendor's property or facilities, regardless of fault, including the sole or concurrent negligence of BSY or the Vendor, or their respective directors, officers, employees, agents or representatives.

**13. IMMIGRATION REQUIREMENTS.** Vendor represents and warrants that each of its employees is authorized to work in the United States during the entire period of performance of the Purchase Order. Vendor will provide BSY with evidence of compliance with

immigration requirements satisfactory to BSY for each of Vendor's employees prior to their entry into BSY facilities.

**14. PAYROLL TAXES.** Vendor agrees to maintain and provide for each of its employees all lawfully required payroll and accounting systems, providing for all applicable payroll taxes and deductions as required by United States, state and local law. Vendor shall solely be responsible for failure to provide for the collection or remittance of any such payroll tax or deduction, and shall defend, indemnify and hold BSY harmless for all loss, costs and expenses (including actual attorney's fees,) and penalties and interest assessed by any governmental agency incurred by BSY as a result of its failure to do so. Vendor agrees to make available to BSY its books and records of account for inspection and audit to verify compliance with this paragraph at all reasonable times and places.

**15. NON-DISCRIMINATION/FAIR EMPLOYMENT PRACTICES.** Vendor warrants and represents it is an equal opportunity employer and agrees it shall not discriminate on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, age, marital status, sex, or sexual orientation in the selection and retention of employees, subcontractors or procurement of materials or equipment.

**16. SOLE EMPLOYER.** Vendor agrees that its employees will perform the Work as required by BSY to comply with the purchase order. Notwithstanding these terms, Vendor agrees that it is the sole employer of its employees, and it is solely responsible for all duties arising out of the employer-employee relationship. Vendor will, to the maximum extent permitted by law, indemnify and hold BSY harmless from all loss, costs or damages arising out of the imposition by any administrative agency or court of any duties based upon any employer status conferred on BSY by reason of the performance of this Purchase Order. Vendor will require each of its employees assigned to work at BSY facilities to execute a release, in form and substance satisfactory to BSY, releasing and waiving all rights to any benefits as an employee of BSY.

**17. Miscellaneous:** (a) The relationship between the parties is one of independent Contractors, and not one of employment, agency, partnership, or other fiduciary or other relationship. (b) Vendor may not assign its rights or delegate its duties under this Order without the prior written consent of BSY. (c) All remedies provided BSY in this Order are cumulative and in addition to such other rights or remedies as may be available to BSY at law or in equity. (d) An initially capitalized term has the meaning given it in this Order, whether defined when first used or thereafter. (e) "Includes", "including" and like terms are not limiting, and so mean "including without limitation thereto." (f) A reference to an Exhibit followed by a letter is a reference to the correspondingly letter ("Exhibit") to this Agreement. Each Exhibit to this Agreement is incorporated in this Agreement and made a part of it. (g) If any portion of this Order is determined invalid or unenforceable by a court of competent jurisdiction, then such portion shall be deemed severed to the extent of the invalidity or unenforceability, and the remainder of this Order shall remain in full force and effect. In all other respects this Order shall be treated as (and all the rights, duties, and powers arising under this Order shall be treated as part of) a single, indivisible Order. (h) This is a maritime Order, to be interpreted in accordance with general maritime law, and not an Order involving improvements to real property or otherwise. The parties further agree that any suit or legal action regarding this agreement shall be filed in the Federal District Court for the Northern District of California, or if Federal jurisdiction is lacking, then in Superior Court of the State of California for Alameda County, each of which is agreed to be a convenient forum. In the event of any legal proceeding to enforce any of the terms or conditions of this agreement, the prevailing party shall be entitled to receive from the other reasonable attorney's fees, expert fees and costs from the other.

### 18. EXHIBITS

#### Exhibit A:

**Subcontractor / Vendor Insurance Requirements**

#### Exhibit B:

**General Safety Rules for Subcontractors / Vendors**

#### Exhibit C:

**Federal Contract Provisions** (Apply only to purchase orders placed under a Government prime contract or a federally funded subcontract.)