

CSafe, LLC – Terms and Conditions of Purchase

1. Definitions

In these Conditions the following expressions have the following meanings:

“Purchaser” means CSafe, LLC or any of its subsidiary or affiliate companies;

“Conditions” mean these terms and conditions for the purchase of Products and/or Services which are incorporated into and form part of the Contract;

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“CSafe Issued Material” means any property, materials, specifications or data issued to Seller by Purchaser to be used in fulfilment of Seller’s obligations under the Contract;

“Products” mean the products, goods or items which are the subject of the Contract;

“Purchase Order” means Purchaser’s order for Products and/or Services as set out in the purchase order, which may without limitation include statements of work, specifications or similar;

“Seller” means the person, firm or company referred to on the face of the Purchase Order with whom the Contract is made by Purchaser;

“Services” means the services which are to be provided by Seller under the Contract as set out in the Purchase Order;

“Contract” means the agreement (contract) between Seller and Purchaser for the supply of the Products and/or Services.

2. Application

The Purchase Order constitutes an offer by Purchaser to purchase Products and/or Services from Seller in accordance with these Conditions. The Purchase Order shall be deemed to be accepted on the earlier of Seller issuing written acceptance of the Purchase Order or any act by Seller consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence. These Conditions shall apply to the Contract to the exclusion of any terms that Seller seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No terms or conditions endorsed on, delivered with, or contained in Seller’s quotation, sales conditions, order confirmation or acknowledgement, specification, invoice or other document shall form part of the Contract except to the extent that Purchaser otherwise agrees in writing. All of these Conditions shall apply to the supply of both Products and Services except where the application to one or the other is specified.

3. Quality and Description

3.1 All Products shall:

3.1.1 conform to the quantity, quality, description and any other particulars contained in the Purchase Order or the Contract;

3.1.2 correspond with any sample, drawing, description and specification furnished;

3.1.3 be of satisfactory quality, fit for any intended use expressly or impliedly made known to Seller;

3.1.4 be free from defects in design, materials and workmanship and remain so for twelve (12) months from delivery; and

3.1.5 comply with all performance specifications included in the Purchase Order.

3.2 All Services shall (i) be provided in full accordance with the terms of the Contract and applicable Purchase Order, (ii) be performed in a proper and skilful manner with the best care and diligence by properly qualified and experienced personnel and (iii) conform to the best industry standards.

Testing, inspection and/or acceptance by Purchaser or end user under Clause 5 shall not be deemed a waiver of Seller’s obligations under this Clause 3. This Clause 3 shall include and apply to any replacement, repaired, substituted or remedial Products or substituted or remedial Services provided by Seller.

4. Statutory Obligations

4.1 Seller shall comply with all relevant statutes, rules and regulations affecting its obligations and the performance of the Contract.

4.2 Whilst on Purchaser’s premises, Seller shall abide by any written or verbal instructions in relation to safety and security issued by Purchaser.

5. Inspection and Rejection

5.1 Seller warrants that it has inspected and tested the Products for compliance with the Contract prior to delivery and shall, if requested, supply Purchaser with certificates of origin and/or testing. Such certificates must state the Purchase Order number together with any Product item numbers detailed within the Purchase Order

5.2 If the Products and/or Services do not comply with the Purchase Order, Purchaser shall within a reasonable time give notice of rejection to Seller and without prejudice to any of its other rights, Purchaser may in its discretion require Seller to comply with the Contract by expeditiously replacing or repairing as appropriate any rejected Products and replacing or otherwise correcting or re-performing any rejected Services. The rejected Products shall be returned to Seller at Seller’s risk and expense.

5.3 Any reference to Seller in this clause includes any affiliate or sub-contractor of Seller. Where Seller repairs, replaces or re-performs any Products or Services pursuant to this Clause 5, the Conditions shall apply to the repaired, replaced or re-performed Products or Services.

5.4 Purchaser reserves the right at reasonable times on reasonable prior written notice to inspect or test the Products or the Services at any stage before delivery and Seller shall give rights of access to its premises and such facilities as Purchaser may reasonably require for such inspection.

6. Delivery and Risk

6.1 Products and Services shall be delivered on the dates and at the rates and at the places specified in the Purchase Order. Delivery may be direct to Purchaser’s end user if so specified on the Purchase Order. Purchaser acting reasonably may delay or alter such dates, rates and places by giving Seller reasonable notice in writing of such alterations.

6.2 Time of delivery is of the essence for the Contract.

6.3 Seller shall ensure that all Products are marked in accordance with the provisions of the Contract and any instructions issued by Purchaser. Products shall be packed so as to reach the places of delivery undamaged and in good condition. Seller shall provide in respect of each shipment of Products a packaging note detailing the applicable Purchase Order number, description, code number (if any) and the quantity of Products shipped.

6.4 If Seller fails to deliver in accordance with the Contract, then Purchaser may cancel the Contract or any part of it and reserves all rights in damages and otherwise arising including but not limited to the right to purchase substitute Products or Services elsewhere and to hold Seller liable for any loss, expense or additional cost incurred.

6.5 Risk of loss to the Products passes to Purchaser on delivery to the location specified in the applicable Purchase Order without prejudice to any right of rejection to which Purchaser may be entitled under Clauses 5 and 6.

6.6 Any of Seller's property brought onto Purchaser's premises will be at and will remain at risk of Seller.

6.7 Any CSafe Issued Material or material issued by a manufacturing partner will be at Seller's risk whilst in Seller's possession and/or control.

7. Title

Seller warrants that it has good title to the Products it is selling to Purchaser. Title to Products shall pass to Purchaser on delivery to Purchaser or collection by Purchaser from Seller's point of dispatch without prejudice to any right of rejection to which Purchaser may be entitled under Clauses 5 and 6. Seller acknowledges that the Products or Services may be sold on to an end user by Purchaser and warrants that Purchaser will be able to supply the end user with good title.

8. Prices

8.1 All prices shall be as stated in the Contract. The prices are fixed and include delivery and all other charges which shall not be adjusted, excepting where the Contract expressly specifies otherwise, and save as provided for in these Conditions.

8.2 Prices do not include VAT or sales tax which shall be added by Seller at the rate and in the manner from time to time prescribed by law.

9. Payment

Seller shall send to Purchaser a detailed invoice referencing the applicable Purchase Order (including Purchase Order number), packaging note and date of delivery, together with any Products or Services reference number. Terms of payment are as stated on the front of the Purchase Order.

10. Confidentiality

10.1 Seller shall keep in strict confidence all CSafe Issued Materials, Purchase Order, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to Seller by Purchaser, its affiliates, employees, agents or subcontractors, and any other confidential information concerning Purchaser's business, its products and services which Seller may obtain. Seller shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging its obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. Seller may also disclose such of Purchaser's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

10.2 Seller shall not, without Purchaser's written consent, advertise or otherwise make known that Seller supplies or has supplied Products or Services to Purchaser.

11. Equipment and other Facilities

All CSafe Issued Material shall be and remain the property of Purchaser. Seller hereby undertakes to maintain SBS Issued Material in good order and condition, to keep it separate from Seller's property and to identify it as the property of Purchaser. Seller shall not use CSafe Issued Material except in respect of Contracts with Purchaser. Risk in CSafe Issued Material shall be with Seller who shall procure comprehensive insurance against all risks of its loss or damage of an amount equal to its replacement cost with Purchaser's interest noted on the policy and with Purchaser named as loss payee.

12. Variation of Goods/Services

12.1 If at any time during the term of the Contract, Purchaser wishes to vary the Services and/or Products ordered, it shall notify Seller in writing and Seller shall, within two (2) business days provide a written statement of the amount by which such variation would increase or decrease:

- a) the dates, timescales or milestones, and
- b) the charges;

which have been agreed in the Contract, and such other information as Purchaser may reasonably require.

12.2 The implementation of any variation to the Services and/or Products shall be subject to the agreement of the parties. Seller shall not undertake any such variations unless specifically instructed to do so by Purchaser.

12.3 Delivery Tolerances only: Purchaser accepts that it is of the nature of some processes that the final amount produced may vary. In consideration of this Purchaser accepts that a delivery tolerance of no more than ten percent (10%) may be supplied in fulfilment of the Contract where Seller has advised Purchaser in writing of this possibility. This is a maximum permitted value and Seller must use best efforts to ensure that the amount stipulated within the Contract is the amount actually delivered. All delivery and invoice documentation must reflect the actual delivered values.

12.4 All variations must be confirmed in writing.

13. Indemnity

13.1 Seller shall indemnify Purchaser against any claims, liabilities, actions, damages, costs, losses and expenses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional costs and expenses) suffered or incurred by Purchaser as a result of or in connection with:

13.1.1 any alleged or actual infringement by any of the Products or Services of any third-party Intellectual Property Right including but not limited to patents, copyright, trademarks, service marks, registered designs, design rights or other rights and Seller shall at its own cost defend or settle all such claims or actions and proceedings brought or threatened to be brought against Purchaser;

13.1.2 Seller's failure to perform its obligations under the Contract; or

13.1.3 death, injury, loss or damage to persons or property caused or contributed to by the negligence of Seller or its employees, sub-suppliers (if permitted) or agents.

Seller accepts liability for all other loss or damage suffered by Purchaser and which is attributable to the negligence of Seller or its employees, sub-suppliers (if permitted) or agents or otherwise results from a breach of the Contract.

14. Force Majeure

Neither party shall be liable to the other for any loss or damage which may be suffered by the other as a direct or indirect result of the performance of its obligations under the Contract being prevented, hindered or delayed by reason of circumstances or events beyond its reasonable control including but not limited to acts of God, war, riot, accident, fire, flood, storm, explosion, epidemic or government action, but expressly excluding lockout, strike, trade dispute or labour disturbance involving its own workforce.

15. Licences

If the Products or Services supplied under the Contract require Purchaser to have any permit or licence from any commercial, governmental or other regulatory authority, the Contract shall be deemed conditional upon such permit or licence being granted at the required time. Seller warrants that it has all necessary permits and licences to allow it to sell the Products and Services to Purchaser.

16. Termination

16.1 Either party may terminate the Contract with immediate effect by notice in writing in the following situations:

16.1.1 if the other party is in breach and, in the event the breach is capable of remedy, fails to remedy the breach within fourteen (14) days of being asked to do so in writing. If the breach cannot be remedied, the party not in breach may terminate the Contract immediately;

16.1.2 if the other party ceases or threatens to cease business, or commits an act of bankruptcy, or it or a third-party takes action for it to go into liquidation unless this is to reconstruct or merge the company or if an administrator, administrative receiver, receiver or manager is appointed for any part of its business;

16.1.3 if, in the reasonable opinion of one party, there occurs a material change in the financial position of the other party which is likely to affect such other party's ability to perform its obligations under the Contract; or

16.1.4 if there is a change in control of the other party which in the reasonable opinion of the party terminating adversely affects the position, rights or interests of the party terminating.

16.2 Termination of a Contract shall not discharge either party from any existing obligation accrued due on or prior to the date of termination.

16.3 Purchaser may cancel a Contract at any time by notice in writing. It will pay for and accept delivery of all finished Products manufactured by Seller at the date of cancellation and shall pay Seller a fair and reasonable sum in respect of all work in progress at the date of cancellation subject to work in progress being transferred to Purchaser.

17. Miscellaneous

17.1 All Intellectual Property Rights in the work carried out under the Contract are hereby assigned to and shall vest in Purchaser absolutely with full title guarantee and free of all third-party rights.

17.2 If any court or other competent authority finds that any provision, or part of any provision, of the Contract is invalid, illegal or unenforceable that provision, or part, shall, to the extent required be deemed to be deleted, and the validity and/or enforceability of the remaining provisions of the Contract shall not be affected.

17.3 If either party delays, forgets or chooses not to enforce their rights under the Contract it shall not affect their rights to do so at a later date. Should either wish to formally waive a right or remedy it shall not in any way restrict their exercise of any right or remedy at a future date.

17.4 The Contract is the entire agreement between the parties and may not be modified or amended unless agreed in writing by properly authorised representatives of both parties.

17.4 All notices must be in writing and sent to the postal address, fax number or email address set out in the Contract. They may be delivered by hand, by first class post, by facsimile or by email and all email notices are to be sent by an email client that has the facility to obtain "delivered" and "read" notifications from the email computer server of the other party, and shall be deemed to have been served:

if by hand, at time of delivery;

if by first class post, two (2) business days after posting;

if by facsimile, on the date printed on the facsimile advice note produced by the sender's machine; and

If by email, at the date and time produced by the email "delivered" receipt.

17.5 Headings do not affect interpretation.

17.6 The Contract shall be governed and construed in accordance with the laws of the State of Ohio. Any dispute or claim arising under the Contract, including non-contractual disputes or claims, shall be irrevocably subject to the exclusive jurisdiction of the state and federal courts of Cincinnati, OH.