

SBE Purchase Order Terms and Conditions

- 1. Acceptance.** The Vendor, as identified on reverse of this page, explicitly or tacitly accepts this purchase order and agrees to be bound by the terms and conditions herein (hereinafter "PO"), by the commencement of the performance of services, and/or the delivery of goods in response to this PO. This PO constitutes the entire agreement between SBE, Inc. ("SBE") and the Vendor, superseding or taking precedence over any and all other agreements with regards to this PO, unless so indicated on the reverse of this page.
- 2. Modifications.** Any modifications to this PO shall be itemized on the reverse of this page or on a subsequent, amended PO and shall take precedence over these terms and conditions. No other modifications shall be accepted or binding.
- 3. Price.** Prices and quantities on the reverse of this page shall be binding unless the Vendor notifies SBE of price changes prior to acceptance of this PO.
- 4. Changes.** SBE reserves the right to request changes to this PO at any time prior to four (4) weeks before the Vendor is scheduled to ship. Changes shall be negotiated in good faith between the Vendor and SBE and accepted by the Vendor, *visa vie* an amended PO.
- 5. Termination.** SBE reserves the right to terminate this PO, or any portion thereof, "for cause" and without any liability to SBE (i) in the event the Vendor breaches this PO, (ii) SBE believes in good faith that the Vendor is unable to comply with this PO and is unable to cure existing non-compliance within five (5) days of written notice by SBE, or (iii) the Vendor becomes insolvent. SBE also reserves the right to terminate this PO, or any portion thereof, "for convenience." The Vendor shall stop all work pertaining to this PO and SBE and the Vendor shall negotiate, in good faith, reasonable cancellation charges, which shall not exceed the value of this PO.
- 6. Delivery.** The Vendor shall package products for shipment, using best commercial practices, to ensure products arrive at SBE undamaged. Carrier shall be the most economical and of good reputation. Delivery date on reverse of this page is the date product is to arrive at SBE. The Vendor shall ship early enough to allow for in-transit time. If shipments are anticipated by the Vendor to be late or early, the Vendor shall contact SBE immediately. SBE reserves the right to cancel this PO or negotiate monetary consideration with the Vendor for late shipments. All boxes and containers shall be prominently labeled with SBE's address and PO number. Title and risk of loss in-transit shall not pass to SBE until shipment is accepted at SBE's facility.
- 7. Inspection and Acceptance.** SBE shall have ten (10) days after receipt of product to inspect and accept shipments. If SBE rejects any product, it will notify the Vendor immediately and negotiate replacement of unacceptable product.
- 8. Invoicing and Payment.** The Vendor shall invoice SBE promptly after delivery. Invoices shall reference the PO number and contain an itemized list of products or services being billed for. This PO takes precedence over any terms and conditions attached to invoices. Payment terms are 30 days net, after product acceptance.
- 9. Warranty.** The Vendor warrants that all materials, services, and goods delivered under this PO shall be new and unused, and free from defects in workmanship, materials, and design and to be in accordance with all requirements of this PO. The Vendor's warranty shall be effective for a period of no less than one (1) year from SBE acceptance.
- 10. Confidentiality.** The Vendor shall not disclose this PO, or any information related to it, to a third party, without prior, written consent from SBE.
- 11. Governing Law.** This PO is governed by the laws of the great State of Vermont, regardless of the place of execution or performance.
- 12. Disputes.** Any dispute under this PO that cannot be settled through mutual negotiation between the Vendor and SBE shall be resolved through binding arbitration by the American Arbitration Association, to take place in Barre, Vermont.
- 13. Assignments.** The Vendor shall not assign any rights or obligations due or to become due under this PO without the prior, written consent of SBE.
- 14. Indemnity.** The Vendor shall indemnify, defend and hold SBE, its officers, directors, employees, agents, customers, and affiliates, harmless from and against any and all demands, claims, actions, causes of action, proceedings, suits, assessments, losses, damages, liabilities, settlements, judgments, fines, penalties, interest, costs and expenses, arising from or by reason of any actual or claimed trademark, patent, or copyright infringements, or any litigation based therein, with respect to any part of the goods and services covered by this PO. Such obligation survives acceptance of and payment for goods and services.
- 15. Severability and Waiver.** In the event any of the provisions herein are ruled unenforceable, the remaining provisions shall still be in full force and effect. Failure of SBE or the Vendor to enforce any of these provisions shall not constitute a waiver of them or of their future enforceability.
- 16. Limitation of Liability.** IN NO EVENT SHALL SBE BE LIABLE TO VENDOR OR A THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL SBE'S LIABILITY HEREUNDER FOR ANY PRODUCT OR SERVICE ORDERED UNDER THIS PO EXCEED THE PURCHASE PRICE OF THE PRODUCT.
- 17. Flow Down Clauses.** If this PO is issued under a contract that contains contractual clauses to be flowed down to vendors and subcontractors, such applicable flow down clauses (i.e. FAR's) shall be attached and be integral to this PO.