



NIAGARA REFINING LLC

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NIAGARA REFINING LLC - TERMS AND CONDITIONS OF PURCHASE

1. ACCEPTANCE

The vendor's commencement of work on the items covered by this purchase order or shipment of such items, whichever occurs first, shall be deemed an effective mode of acceptance of Niagara Refining LLC's offer to purchase such items.

Any acceptance of this purchase order shall be limited to acceptance of the express terms of the offer contained on the face and pages hereof. Any proposal for additional or different terms or any attempt by the vendor to vary in any degree any of the terms of this purchase order in the vendor's acceptance is hereby objected to and rejected, but such proposal shall not operate as a rejection of this offer unless variance is in the terms of the description, quantity, price or delivery schedule of the items, but shall be deemed a material alteration hereof, and this offer shall be deemed accepted by the vendor without said additional or different terms.

If this purchase order is deemed an acceptance of a prior offer by the vendor, such acceptance shall be limited to the express terms contained on the face and pages hereof. Additional or different terms or any attempt by the vendor to vary in any degree any of the terms of this purchase order shall be deemed material and shall be objected to and rejected, but this purchase order shall not operate as a rejection of the vendor's offer unless it contains variance in the terms of the description, quantity, price or delivery schedule of the items.

2. PRICES

Niagara Refining LLC shall not be billed at prices higher than those stated on the front of this purchase order. Unless otherwise specified, the price stated includes all charges for packing, hauling, storage and transportation to point of delivery. The vendor shall pay all delivery charges in excess of any delivery charge Niagara Refining LLC has agreed to pay. The price stated includes all taxes except national, federal, state or local sales or use tax or similar taxes which the vendor is required by law to collect from Niagara Refining LLC. Such taxes, if any, shall be separately stated in the vendor's invoice and paid by Niagara Refining LLC unless an exemption is available. The vendor agrees that it shall immediately notify Niagara Refining LLC of any price reduction/discount made to any other party with respect to the same or similar items subsequent to placement of this purchase order but prior to payment, and that such price reduction/discount shall be applicable to this purchase order.

3. DELIVERY AND PACKAGE

Time and quantity of delivery are of essence of this purchase order. The vendor shall respect Niagara Refining LLC's delivery schedule, and make every reasonable effort to meet the delivery date specified by Niagara Refining LLC on this purchase order. Substitutions shall not be accepted. The items shall be delivered completely by date requested but shall not be delivered more than one (1) week in advance of the time or times specified herein, without Niagara Refining LLC's prior approval. When more than one (1) shipment is made against any purchase order, indicate "Final Shipping" on shipping papers and invoice accompanying the last shipment in the purchase order. The vendor shall not ship excess quantities without Niagara Refining LLC's prior approval. Except as otherwise provided herein, Niagara Refining LLC shall not be obligated to accept untimely, excess or under shipments and such shipments in whole or in part may, at Niagara Refining LLC's option, be returned to the vendor, or held for disposition at the vendor's expense and risk. The vendor shall invoice all shipments in triplicate. The invoice shall describe the items, state the purchase order number and be attached to the original bill of lading or other shipping receipt.

The packaging and packing of the items delivered hereunder shall be in accordance with Niagara Refining LLC's instructions and the appropriate international shipping standards and practices suitable for transport of the items.

4. WARRANTIES AND REMEDIES

The vendor warrants that the items shall be free of any claim of any nature by any third party and that the vendor is able to and shall convey clear title thereto to Niagara Refining LLC. The vendor warrants that the items shall conform to applicable specifications, instructions, drawings, data and samples, shall be merchantable, shall be free from any defects in design, materials or workmanship, and shall be fit and sufficient for the purpose intended. These warranties shall be in addition to all other warranties, express, implied or statutory. Payment for, inspection of, or receipt of the items shall not constitute a waiver of any breach of warranty.

The vendor shall, at Niagara Refining LLC's option and at no cost to Niagara Refining LLC, (a) repair, (b) replace, (c) refund to Niagara Refining LLC the purchase price of, or (d) allow Niagara Refining LLC to reject the payment of the purchase price of, the items not meeting the warranties. Niagara Refining LLC can exercise any remedies available hereunder or at law or equity without precluding or prejudicing the same or any other rights or remedies.

5. INSPECTION AND TEST

All items shall be subject to inspection and test by Niagara Refining LLC to the extent practicable at all times and places. The time and place for inspection shall be reasonably decided by Niagara Refining LLC. The vendor agrees to permit access to the vendor's facilities at all reasonable times for inspection of the items by Niagara Refining LLC's agents or employees and shall provide all tools, facilities and assistance reasonably necessary for such inspection at no additional cost to Niagara Refining LLC. In the event that Niagara Refining LLC finds any item or part thereof defective in any manner, the vendor shall repair or replace such item or part prior to shipment at no additional cost to Niagara Refining LLC. Such items shall be subject to final inspection and acceptance by Niagara Refining LLC after delivery to Niagara Refining LLC. It is expressly agreed that inspections and/or payments prior to delivery shall not constitute final acceptance. If the items delivered do not meet the specifications or otherwise do not conform to the requirements of this purchase order, Niagara Refining LLC shall have the right to reject such items. The items which have been delivered and rejected in whole or in part may, at Niagara Refining LLC's option, be returned to the vendor or held for disposition at the vendor's expense and risk. In order to avoid any doubts, no inspection by Niagara Refining LLC shall reduce the vendor's responsibility hereunder.

6. LICENSE

In consideration of obtaining an order of the items hereunder, the vendor grants to Niagara Refining LLC indivisible and non-exclusive licenses necessary to use the items and sell the products produced by operating such items.

Upon Niagara Refining LLC's request, the vendor shall, free of any additional charges, provide Niagara Refining LLC with technical advice and assistance reasonably necessary to complete assembly and installation of the items by Niagara Refining LLC. Further, upon Niagara Refining LLC's request, the vendor shall, free of any additional charges, provide Niagara Refining LLC with technical training to the representatives of Niagara Refining LLC at the vendor's or Niagara Refining LLC's facility in respect of the operation and maintenance of the items, provided that all expenses of traveling, living and insurance for such representatives shall be borne and paid by Niagara Refining LLC.

7. SPECIFICATIONS

For a period of thirty (30) days after the date of this purchase order, Niagara Refining LLC may request any alteration or modification of the specifications of the items, unless such alteration or modification would have any serious impact on delivery, installation, performance or price of the items. The vendor shall not refuse such request from Niagara Refining LLC without reasonable cause and shall make its best efforts to meet such request.

If Niagara Refining LLC's representatives review drawings, specifications or other data developed by the vendor in connection with this purchase order, and make suggestions or comments or approve such documents and data, such action is only an expression of opinion by Niagara Refining LLC and shall not serve to relieve the vendor of any responsibility for the reliability, quality, rate of output, cost, delivery, performance or any other requirements of this purchase order.

8. TITLE AND RISK OF LOSS OR DAMAGE

Except as otherwise agreed upon by Niagara Refining LLC and the vendor by the means of indicating trade terms on the front of this purchase order or otherwise, upon delivery of the items, title and risk of loss or damage thereto shall pass to Niagara Refining LLC free and clear of all liens, claims, security interests or encumbrances, and no items shall be subject to any agreement under which any lien, claim, security interest or encumbrance therein or thereon is retained by any third party.

9. CONFIDENTIALITY

The vendor shall keep confidential all information, drawings, specifications or data furnished by Niagara Refining LLC, or prepared by the vendor specifically in connection with the performance of this purchase order, and shall not divulge or use such information, drawings, specifications or data for the benefit of any other party. Except as required for the efficient performance of this purchase order, the vendor shall not make copies or permit copies to be made without the prior written consent of Niagara Refining LLC. The vendor shall not use, either directly or indirectly, any such information, drawings, specifications or data for any purpose other than to perform this purchase order without obtaining Niagara Refining LLC's prior written consent.

10. USE OF INFORMATION

The vendor agrees that all information heretofore or hereafter furnished or disclosed to Niagara Refining LLC by the vendor in connection with the placing or filling of this purchase order is furnished or disclosed as a part of the consideration for this purchase order, that such information is not, unless otherwise agreed to by Niagara Refining LLC in writing, to be treated as confidential or proprietary, and that the vendor shall assert no claims (other than for patent infringement) by reason of the use or disclosure of such information by Niagara Refining LLC, its assigns or its customers.

11. ADVERTISEMENTS AND IDENTIFICATION

The vendor shall not in any manner advertise or publish the fact that it has furnished, or contracted to furnish, Niagara Refining LLC the items without prior written consent of Niagara Refining LLC. The vendor shall not disclose any details in connection with this purchase order to any party except as may be otherwise provided.

The vendor shall make no use of any identification of Niagara Refining LLC or its affiliates in the vendor's advertising or promotional efforts in reference to activities undertaken by the vendor under this purchase order without Niagara Refining LLC's prior written consent. The term "identification" includes, but is not limited to, any trade name, trademark, service mark, insignia, symbol or any simulation thereof. The vendor agrees to remove any such identification prior to sale, use or disposition of the items rejected, not purchased or returned by Niagara Refining LLC, and shall indemnify Niagara Refining LLC and its affiliates against any claim arising out of the vendor's failure to do so.



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12. TERMINATION

Niagara Refining LLC may terminate the performance of the work under this purchase order in whole at any time, or from time to time in part, by written notice to the vendor. Upon the termination of this purchase order, full and complete settlement of all claims of the vendor with respect to this purchase order shall be made as follows: unless such termination is for the default of the vendor, Niagara Refining LLC shall pay the vendor an amount equal to the vendor's reasonable direct costs and expenses of labor and materials incurred in the production of the items pursuant to this purchase order, and the vendor's reasonable cost of salvage or scrap, provided that (i) the vendor shall use commercially reasonable efforts to cancel orders for materials and/or return materials to its supplier(s) if such action is likely to minimize compensation payable hereunder by Niagara Refining LLC to the vendor, (ii) the vendor shall use commercially reasonable efforts to sell the items to any third party(ies) or otherwise dispose of the items in the most beneficial manner as long as such sale or disposition is not inconsistent with any other obligations hereunder (i.e. Confidentiality, Use of Information, Advertisements and Identification, etc.), and (iii) the vendor shall furnish to Niagara Refining LLC the reasonable documentation detailing its direct costs and expenses and other particulars in the format reasonably requested by Niagara Refining LLC, as the vendor's full compensation for the work completed under this purchase order. Such amount shall not, in any circumstances, exceed the purchase price of the applicable items. Nothing contained in this paragraph shall be construed to limit or affect any remedies which Niagara Refining LLC may have as a result of a default by the vendor.

13. DEFAULT - CANCELLATION

Niagara Refining LLC reserves the right, by written notice of default, to cancel this purchase order, without any liability to the vendor, in the event of the happening of any of the following: insolvency of the vendor, the filing of a voluntary petition in bankruptcy by the vendor, the filing of an involuntary petition to have the vendor declared bankrupt, the appointment of a receiver or trustee for the vendor, or the execution by the vendor of an assignment for the benefit of creditors. If the vendor fails to perform as specified herein, or if the vendor breaches any of the terms hereof, Niagara Refining LLC reserves the right, without any liability to the vendor, upon giving the vendor written notice, to (i) cancel this purchase order in whole or in part and the vendor shall be liable to Niagara Refining LLC for all damages, losses and liability incurred by Niagara Refining LLC directly or indirectly resulting from the vendor's breach, or (ii) obtain the items from another source with any excess cost resulting therefrom chargeable to the vendor, if such deficiencies are not remedied. The remedies herein provided shall be cumulative and in addition to any other remedies provided at law or in equity.

14. SPARE PARTS AND REPLACEMENT PARTS

The vendor shall maintain and make available any spare parts and replacement parts of the items for _____ (__) years after the date of this purchase order. Upon Niagara Refining LLC's request, the vendor shall supply the spare parts and replacement parts at the applicable prices. Payment terms and other terms in respect thereof shall be agreed upon through the consultation between the parties.

15. SURVIVAL OF OBLIGATIONS

The vendor's obligations under this purchase order which by nature would continue beyond termination or cancellation of this purchase order shall survive the termination or cancellation.

16. FORCE MAJEURE

Neither party shall be liable for defaults or delays due to Acts of God, acts of the public enemy, acts or demands of any government or any governmental agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault, intent or negligence. Each party shall notify the other in writing of the cause of such delay within five (5) days after the beginning thereof. Niagara Refining LLC reserves the right, by written notice to the vendor, to cancel this purchase order, without any liability to the vendor, in the event of the continuation of such cause for thirty (30) days or more.

17. COMPLIANCE WITH LAWS

The vendor agrees to fully observe and comply with all applicable national, federal, state and local laws, rules, regulations and orders pertaining to the production and sale of the items, and, upon request, the vendor shall furnish Niagara Refining LLC certificates or evidence of compliance with such laws, rules, regulations and orders. Without prejudice to the generality of the foregoing, the vendor agrees to furnish only the items (and package therefor) which comply with all national, federal, state and local laws, rules, regulations and orders pertaining to safety and health standards and to environmental compliance, including, but not limited to, those related to chemical, biological and radioactive substances or matters. In addition, the vendor shall not export/import the items without first obtaining all required licenses from the appropriate authorities of the country(ies) of the vendor or/and Niagara Refining LLC, if any.

The vendor agrees to indemnify and hold harmless Niagara Refining LLC, its affiliates and their directors, officers, employees, successors and assigns and customers and users of their products from any liability arising from the failure of the items (and package therefor) to comply with such laws, rules, regulations and orders.

All persons dispatched by the vendor in order to perform the duties under this purchase order shall be considered solely the vendor's employees or agents, and the vendor shall be responsible for any and all obligations or duties in connection with employment of such persons.

18. INDEMNIFICATION AND NO IMPLEADER

The vendor agrees to indemnify and hold harmless Niagara Refining LLC, its affiliates and their directors, officers, employees, successors and assigns and customers and users of their products against all suits at law or in equity and from all damages, claims and demands arising out of the death of or injury to any person or damage to any property alleged to have resulted from the items, and, upon the tendering of any suit or claim to the vendor, Niagara Refining LLC or any other party, to defend the same at the vendor's expense as to all costs, fees and damages. The foregoing indemnification shall apply whether the vendor, Niagara Refining LLC or any other party defends such suit or claim and whether the death, injury or property damage is caused by the sole or concurrent fault, intent or negligence of the vendor or otherwise.

The vendor shall not implead or bring an action against Niagara Refining LLC or its employees based on any claim by any person for death of or injury to an employee of Niagara Refining LLC occurring in the course or scope of the employment and that arises out of items furnished under this purchase order.

19. PATENT INDEMNIFICATION

The vendor shall indemnify and hold harmless Niagara Refining LLC, its affiliates and their directors, officers, employees, successors, assigns and customers or users of their products, from and against all loss, liability and damage, including costs and expenses, resulting from any claim that the manufacture, use, sale or resale of any of the items infringes any patent, copyright, trademark, trade secret, or any other intellectual property rights, and the vendor shall, when notified, defend any action or claim of such infringement at its own expense.

20. ASSIGNMENT

Neither this purchase order nor any rights or obligations herein may be assigned by the vendor nor may the vendor delegate the performance of any of its duties hereunder without, in either case, Niagara Refining LLC's prior written consent.

21. NOTICES AND INVOICES

All correspondence and invoices covering this purchase order shall be addressed to Niagara Refining LLC's Contact Person as indicated on the face of this purchase order.

22. SEVERABILITY

If any provision of this purchase order is held invalid or unenforceable, the remaining provisions shall not be affected thereby, and the parties shall in good faith attempt to amend this purchase order to eliminate such invalidity or unenforceability and to give substantial effect to the provision that was declared invalid or unenforceable.

23. WAIVER

No failure or delay of one party to require performance by the other of any provision of this purchase order shall in any way adversely affect such party's right to require full performance of such provision thereafter. No waiver by one party of a breach of any provision of this purchase order shall be taken to be a waiver by such party of any succeeding breach of such provision.

24. HEADINGS

The headings contained herein are for convenience of reference only and are not intended to have any substantive significance in interpreting this purchase order.

25. APPLICABLE LAW

The validity, interpretation and performance of the terms of this purchase order shall be governed by the laws of Niagara Refining LLC's home office.

26. DISPUTES

This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York. Any claim, dispute or controversy arising between Niagara Refining LLC and the vendor out of or in relation to this purchase order, or breach hereof, which may not be amicably settled by the parties, may have to be resolved through litigation in a court of competent jurisdiction in the State of New York.

27. ENTIRE AGREEMENT AND MODIFICATION

This purchase order, together with other documents expressly referenced herein, constitutes the entire agreement between the parties and may not be changed or modified except by an instrument signed by duly authorized representatives of the parties. Any representation, promise or condition not contained herein shall not be binding upon either party.