

Purchase Order Terms and Conditions

These Terms and Conditions (the “**Terms and Conditions**”) shall apply to all agreements entered into by Back Of The House, LLC, its subsidiaries and affiliates (“**Back Of The House**”), for the purchase of tangible and intangible goods and services (collectively, “**Product**” or “**Products**”).

1. **Purchase Orders.** All purchase orders (“**PO**”) issued by BACK OF THE HOUSE shall be governed by these Terms and Conditions.
2. **No Alteration.** These Terms and Conditions may not be altered, directly or indirectly, by the seller or ultimate provider (the “**Seller**”) or by conduct of BACK OF THE HOUSE or Seller.
3. **Modifications, Rescissions, or Waivers.** All modifications, rescissions, or waivers of any BACK OF THE HOUSE PO or these Terms and Conditions shall be stated explicitly in prior writing signed by Back Of The House and Seller.
4. **Seller as Independent Contractor.** Seller is an independent contractor in all its activities under any PO. Seller is responsible for all social security, unemployment insurance, worker’s compensation, income tax, and any other payments or deductions required by local, state, or federal law or regulation. Seller has no authority to create any obligation or liability for or in the name of Back Of The House.
5. **Good Title.** Seller shall convey all Products and constituent parts with good title, by rightful transfer, free from any security interest or other lien or encumbrance, and free of rightful claim of any third person by way of infringement or the like.
6. **Notice of Shipment.** Seller shall give Back Of The House immediate electronic notice of shipment with carrier name and shipment tracking information. Each shipment shall include a fully completed Bill of Lading and a detailed packing slip with the Purchase Order number on each delivery. When freight is quoted as prepaid and add Seller shall immediately provide the actual freight price to Back Of The House upon shipment.
7. **Delivery.** Time is of the essence. All deliveries of Products shall be completed free on board to the destination(s) selected by Back Of The House, at the delivery times specified in the PO or other written notice to Seller, and at the Seller’s full cost and risk of loss. Shipments must equal the exact amounts identified in the PO and no partial shipments, changes or substitutions in specifications may be made without BACK OF THE HOUSE’S prior written consent.
8. **Premium Transportation.** If it becomes necessary for Seller to ship by a more expensive mode than specified on the face of this PO to meet a schedule, Seller shall pay any resulting premium transportation cost unless Seller can establish to Back Of The House's satisfaction that the necessity for the change in routing is occasioned by force majeure events.
9. **Proof of Delivery.** Proof of all completed deliveries shall be pursuant to a signed, clean Bill of Lading or signed copy of the packing slip by Back Of The House's authorized representative.
10. **Packaging.** Seller shall package all shipped Products to prevent damage with prominent labeling of all packaging at Seller’s cost. A packing list must be enclosed in all shipments

showing the Back Of The House part number(s), purchase order number, and exact quantity and description of the goods shipped.

11. **Late Delivery Penalty.** Seller shall pay Back Of The House late delivery penalties of 1.5% of unit price per calendar day of late delivery to an aggregate maximum of 30% of unit price for each day of late delivery for all Products not delivered by the delivery times specified in the PO or other written notice to Seller.
12. **Payment.** Back Of The House shall pay for delivered Products within sixty (60) business days of receipt of delivered Products and Seller's written invoice.
13. **Presumptions.** Seller shall be conclusively presumed to have waived Seller's right to receive payment for goods or services covered by any PO if Seller has not submitted an invoice for the goods or services within six (6) months of the date of the PO.
14. **Risk of Loss.** Risk of loss for all Products purchased by Back Of The House shall pass to Back Of The House upon actual delivery to the location(s) selected by Back Of The House.
15. **Changes.** Back Of The House reserves the right to make changes in drawings, designs, specifications, scope of work to be performed, time and place of delivery and method of transportation. If such change is to be made, it will be evidenced in writing by Back Of The House in the form of a revised PO. If any such change has an effect on the price, warranty, delivery date or indemnification provisions of the PO, an equitable written acknowledgement of the effect on the changed provisions shall be indicated on the PO. Seller may not make any change in drawings, design specifications, scope of work to be performed, time and place of delivery and method of transportation without Back Of The House's written PO acknowledging the change. Any such revised PO accepted by Seller shall be incorporated in and amend the PO.
16. **Damaged or Destroyed Products.** Back Of The House shall have the right to reject receipt of Products that are defective, damaged, or destroyed by giving written notice of rejection to Seller within thirty (30) business days immediately following complete delivery to the location(s) selected by Back Of The House.
17. **Defective Products.** Back Of The House shall have the right to reject, with full refund of purchase price to Back Of The House, or repair, at Seller's expense, any defect in Products received by giving written notice to Seller within ninety (90) business days of discovery of any defect. Defects not subject to reasonable discovery after delivery shall be subject to Back Of The House's right to reject, with full refund of purchase price to Back Of The House, or repair, at Seller's expense, by Back Of The House written notice of defect to Seller for a period of no more than ten (10) years immediately following complete delivery of the Products subject to defect(s).
18. **Intellectual Property Rights.** Any copyright, trademark, trade secret, software, data, idea, concept, process, formula, invention, system, report, or other intellectual property resulting from any Seller work performed for the PO, derived from, or based on information supplied by Back Of The House, or conceived or reduced to practice by Seller using Back Of The House's funds, will be the sole property of Back Of The House. Seller agrees to assign and hereby assigns to Back Of The House any interest Seller may have in such intellectual property right or invention conceived by Seller or reduced to practice by Seller.

19. **Intellectual Property Indemnity.** Seller shall save, indemnify, and hold harmless Back Of The House, its agents, customers, and users of the Products from and against all loss, damage, and liability incurred on account of any infringement or alleged infringement of a Patent, copyright, or trademark or misappropriation of a trade secret or other violation of an intellectual property right of a third party, arising out of the manufacture, sale, or use of such Products by Seller, Back Of The House, Back Of The House's agents, customers, or users of the Products.
20. **Insurance.** Seller shall maintain insurance with coverages and limits that are customary for the industry in which it operates, and with insurers with A.M. Best ratings of A-. If Seller or its subcontractors or their directors, officers, agents, and employees are on Back Of The House's premises, or perform work with any of Back Of The House's employees, Seller must provide Back Of The House a certificate of insurance upon request showing that Seller is covered by Workers' Compensation as required by law; Employers Liability and Occupational Disease insurance with limits of at least \$1,000,000 per occurrence, Automobile Liability with limits of at least \$1,000,000, Commercial General Liability with limits of not less than \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage, and Umbrella Liability with limits of at least \$5,000,000. Commercial General Liability policy shall name Back Of The House an additional insured as its interest may appear, be primary and non-contributory to any insurance available or maintained by Back Of The House and contain a waiver of subrogation in favor of Back Of The House.
21. **On-Site Services.** If Seller performs any services at one of Back Of The House's sites, Back Of The House reserves the right to interview and accept or reject any personnel Seller provides prior to assignment to Back Of The House's facility. Back Of The House may require any such personnel to pass a drug screening test. Seller agrees to employ only competent and skilled personnel to perform the services and will use all practicable means to ensure the continued employment of personnel performing Services pursuant to this PO. Upon Back Of The House's request, Seller will immediately remove from all facilities and replace any personnel who are unsatisfactory to Back Of The House for any reason. Seller warrants that all personnel Seller assigns to Back Of The House's facilities shall have a prior satisfactory work record in a responsible capacity; have no felony criminal record; be in good health without any physical or mental conditions which would prevent the performance of essential functions of the job. If Seller is or becomes a party to any collaborative bargaining agreement regarding contracted personnel, no provision in that agreement shall be binding upon Back Of The House, unless otherwise required by law. Seller further agrees, while Seller's personnel are on Back Of The House's premises, that they will abide by Back Of The House's normal rules of work and Back Of The House's safety guidelines.
22. **Hazardous Products or Materials.** Seller shall provide prior written notice to Back Of The House of all hazardous Products or materials contained in Products including warning labels and material safety data sheets in compliance with 29 C.F.R. §1910.1200.
23. **Warranties.** Seller warrants that all Products delivered under the PO will be free from defects in design; material and workmanship will conform to applicable descriptions,

specifications, and drawings and suitable for the purpose intended. THIS WARRANTY SHALL BE IN ADDITION TO ALL WARRANTIES ARISING AS A MATTER OF LAW AND SHALL SURVIVE ACCEPTANCE AND PAYMENT. Seller's warranties will be enforceable by Back Of The House's customers as well as Back Of The House, will begin at delivery to Back Of The House, and valid for thirty-six (36) months after delivery to Back Of The House's customers.

24. **Time of Essence.** Time is of the essence for all scheduled times and deadlines.
25. **Force Majeure.** Neither Seller nor Back Of The House shall be liable for a delay in the performance of its obligations and responsibilities under this PO when the delay is due to causes beyond its control, such as but not limited to war, embargo, national emergency, insurrection or riot, acts of the public enemy, fire, flood, or other natural disaster, provided that the affected party has taken reasonable measures to notify the other, in writing, of the delay. Failure of subcontractors and inability to obtain materials or labor (including strikes or lockouts) shall not be considered as a force majeure delay.
26. **Indemnity.** The Seller covenants and agrees to defend, indemnify, protect, and hold harmless Back Of The House, its subsidiaries, affiliates, parent companies, and their respective directors, officers, agents, shareholders, contractors, employees, successors, and assigns (collectively, the "Indemnified Persons") from and against any liability, claim of liability, allegation, judgment, cost, expense (including reasonable attorneys' fees and costs), cause of action, loss, or damage whatsoever including, without limitation, death or injury to any person or damage to any property, resulting from or arising out of the Seller's acts or omissions (or those of its subcontractors) in connection with this GSA or any Purchase Order, whether resulting from, without limitation, negligence, failure to comply with applicable laws, breach of any warranty, representation or certification, defect in design, material, or workmanship; or strict liability, other than those acts or omissions which are directly caused by the gross negligence or willful misconduct of an Indemnified Person. Back Of The House shall provide the Seller with timely written notice of any such claim, provide all relevant information, and cooperate fully with the Seller in furtherance of the Seller's obligation herein. If Back Of The House is required to bring an action for enforcement of this indemnification provision, Back Of The House shall be entitled to an award of its reasonable attorneys' fees and costs incurred in such proceeding.
27. **Governing Law.** All Back Of The House POs and these Terms and Conditions, including any ancillary documents thereto and hereto, shall be governed by the laws of the State of Texas and applicable federal law of the United States of America, except for any conflicts of law principles.
28. **Limitation of Damages.** Back Of The House shall not be liable to Seller, under any circumstances, for consequential damages, indirect damages, lost profits (direct and indirect), or exemplary or punitive damages.
29. **Exclusive Venue.** Exclusive, mandatory venue for all disputes, subject to the alternative dispute resolution provisions herein, shall be the state and federal district courts sitting in Collin County, Texas.
30. **Alternative Dispute Resolution.** Any controversy or claim arising out of or relating to these Terms and Conditions, PO, and document to which these Terms and Conditions, or PO apply, or the breach thereof, including the validity, scope, enforceability, and

arbitrability of this arbitration agreement, shall be settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with the then effective AAA Commercial Arbitration Rules. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any provisional remedy which would be available from a court of law shall be available from the arbitrator pending arbitration. The Federal Arbitration Act shall govern all arbitration proceedings. The arbitration shall be conducted in Collin County, Texas, by one neutral arbitrator chosen by AAA according to its then effective Commercial Arbitration Rules. Neither party nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. All fees and expenses of the arbitration shall be borne by the parties equally who shall make deposits as requested by AAA. Failure or refusal by a party to pay its share of the requested deposits shall constitute a waiver by the non-paying party of its rights to be heard, present evidence, cross-examine witnesses, and assert counterclaims in the arbitration. Informing the arbitrator of a party’s failure to pay its share of the requested deposits for the purpose of implementing this waiver provision shall not be deemed to affect the arbitrator’s impartiality, neutrality, independence, or ability to proceed with the arbitration. Each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proofs. The prevailing party, according to the arbitrator, however, shall be entitled to an award of reasonable attorney’s fees, for the arbitration and for all appeals of the award, as well as arbitration fees and AAA administrative expenses. This agreement to arbitrate shall survive the termination or repudiation of any agreement or contract to which these Terms and Conditions apply.