

The Hertz Corporation Standard Agreement for the Purchase of Goods and Services

Purchase Order Terms and Conditions

1. Introduction

1.1 The terms and conditions of the agreement signed by the parties ("**Reference Agreement**," which may be identified on the Purchase Order) and Mutual Non-Disclosure Agreement identified above (if any) are hereby incorporated herein by reference. In the event of any inconsistencies between the terms and conditions contained in this Purchase Order and the Reference Agreement, the order of precedence shall be (a) the terms on the face of the Purchase Order (page one), (b) the Reference Agreement, (c) the Mutual Non-Disclosure Agreement, and (d) these Terms and Conditions. Collectively, (a), (b), (c), and (d) comprise the "**Agreement**" between the parties. The rights and obligations contained in the Reference Agreement and this Purchase Order are the only terms and conditions upon which Hertz is prepared to deal with Supplier and shall in their entirety govern the supply of the goods ("**Goods**") and services ("**Services**") by Supplier to Hertz. If there is no Reference Agreement, then the Purchase Order as supplemented by these Terms and Conditions shall control.

1.2 No terms and conditions endorsed upon, delivered with or contained in any quotation, acknowledgement or acceptance of an order, whether hand-written or printed, or similar document prepared or supplied by Supplier ("**Supplier Documentation**") will form part of the terms and conditions upon which Supplier supplies the Goods and Services and Supplier waives any right which Supplier otherwise might have to rely on such Supplier Documentation.

2. Quality of the Goods

2.1 Supplier warrants that the Goods shall be of the best available design, quality, material and workmanship and be without defect and conform in all respects to the specification set out in the Reference Agreement and/or the Purchase Order (the "**Specification**") and will be merchantable, fit and sufficient for the purposes intended. At the time of delivery of the Goods to Hertz, Supplier will be the sole owner thereof and will have the full right, power and authority to transfer same to Hertz, free of all liens, claims, and encumbrances whatsoever. This warranty shall survive any inspection, delivery or acceptance of the Goods, or payment therefore by Hertz.

2.2 Hertz may inspect at any time the Goods delivered to it by Supplier and determine whether Supplier complies with the Specification. If Hertz notifies Supplier that the Goods do not conform or are unlikely to conform to the Specification, Supplier shall immediately take such action as is necessary to ensure conformity. In addition, Hertz shall have the right to require further inspection.

2.3 Notwithstanding any inspection or testing, Supplier will remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect Supplier's obligations under this Agreement.

2.4 If any of the Goods fail to comply with the provisions set out in this Section 2, Hertz shall be entitled to the remedies listed in Section 17.

3. Delivery of the Goods

3.1 Supplier will supply and deliver the Goods, freight paid, to Hertz's place of business or to such other place of delivery as is agreed with Hertz. Supplier shall off-load any Goods as directed by Hertz.

3.2 The date for delivery of the Goods shall be as set forth in the "Need By" column on the Purchase Order (the "**Delivery Date**"), or if no such date is specified then delivery shall take place within 28 days of the Order (the "**Due Date**"). Unless stipulated otherwise by Hertz, deliveries shall only be accepted in normal business hours.

3.3 If the Goods are not delivered on the Delivery or Due Date then, without prejudice to any other rights that it may have, Hertz reserves the right to:

3.3.1 Cancel this Agreement in whole or in part; and/or

3.3.2 Refuse to accept any subsequent delivery of the Goods that Supplier attempts to make.

3.4 If Supplier requires Hertz to return any packaging material to Supplier that fact must be clearly stated on the Purchase Order and any such packaging material will only be returned to Supplier at the cost of Supplier.

3.5 Where Hertz agrees in writing to accept delivery by installments, this Agreement will be construed as a single contract in respect of each installment. Nevertheless, failure by Supplier to deliver any one installment shall entitle Hertz at its option to treat the whole Agreement as repudiated.

3.6 If the Goods are delivered to Hertz in excess of the quantities ordered Hertz shall not be bound to pay for the excess and any excess will be and will remain at Supplier's risk and will be returnable at Supplier's expense.

3.7 Time shall be of the essence with respect to all of Supplier's obligations under this Agreement, including - without limitation - delivery of all Goods and Services.

4. Invoicing & Delivery Notes

Supplier agrees to:

4.1 Invoice Hertz upon, but separately from, delivery of the Goods and performance of the Services to Hertz.

4.2 Send invoices to the "Bill to" address indicated on the Purchase Order or as notified to the Supplier by Hertz from time to time.

4.3 Ensure that each delivery is accompanied by a delivery note that shows: the Purchase Order number provided to Supplier by Hertz; date of Order; number of packages and contents; and any outstanding balance remaining to be delivered.

4.4 Failure by Supplier to include the Purchase Order number in the invoice will automatically nullify such invoice attempt and result in Hertz returning the invoice unpaid to the Supplier.

5. Risk/Property in the Goods

The Goods shall remain at the risk of Supplier until delivery to Hertz is complete (including off-loading and stacking) when ownership of the Goods shall pass to Hertz.

6. [reserved]

7. Use of Hertz Premises, Contents & Equipment ("Hertz's Property")

7.1 Hertz will allow Supplier such access to Hertz's Property as is reasonably required for the purposes of providing the Goods and Services. Supplier shall ensure that all Hertz's reasonable requirements with regards to such access are fulfilled.

7.2 Hertz reserves the right to exclude any person from accessing Hertz's Property in the event of an actual or threatened breach of this Agreement or violation of Federal or state law.

7.3 To the extent permitted by law, Hertz hereby disclaims any liability for any injury to persons entering Hertz's premises or using Hertz equipment with Supplier's authorization or for any loss or damage caused to property brought onto Hertz's premises by Supplier.

7.4 To the fullest extent permitted by law, Supplier indemnifies Hertz against all and any damage to Hertz's Property caused by Supplier.

8. Price

8.1 The price of the Goods and Services is set out in the Purchase Order and, unless otherwise agreed in writing by Hertz, shall be inclusive of all applicable Federal, State and local taxes.

8.2 Subject to Section 8.3, Hertz reserves the right to market test competitive pricing from time to time during the Term for the purposes of confirming competitiveness of the pricing.

8.3 In the event that Supplier's prices are not, in Hertz's reasonable opinion, competitive, Hertz reserves the right to:

8.3.1 Cancel any outstanding Order (in whole or in part) at no cost to Hertz; and/or

8.3.2 Terminate this Agreement upon 30 days written notice to Supplier.

9. Payment

9.1 Hertz shall pay the price of the Goods and Services within 75 days from receipt of an accurate invoice.

9.2 Unless agreed otherwise by the parties, payment by Hertz shall be in US Dollars.

9.3 Without prejudice to any other right or remedy, Hertz reserves the right to set off any amount owing at any time from Supplier to Hertz against any amount payable by Hertz to Supplier under this Agreement.

10. Indemnity

10.1 Supplier shall indemnify, defend and hold harmless Hertz and any of its subsidiaries and their respective officers, directors, employees, agents and assigns ("**Indemnitees**") from and against all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, charges, and expenses (collectively "**Damages**") including fees and expenses of legal counsel and expert witnesses which may be imposed upon or incurred by or asserted against the Indemnitees or any of them, by reason of actual or alleged (i) injury or death to persons (including without limitation, employees of one or more of the Indemnitees or of Supplier and employees of its contractors, subcontractors or agents, (ii) damage to the property of any person or legal entity (including without limitation, the property of one or more of the Indemnitees and the property of its contractors, subcontractors, agents or employees, and (iii) infringement of any patent, copyright, trademark, trade name or service mark, intellectual or other proprietary right of any third party, as a result or arising out of the work or Services performed under this Agreement by Supplier, its subcontractors, agents or employees. The foregoing agreement to indemnify and hold Indemnitees harmless shall not be applicable to the extent that such Damages are caused by the willful misconduct or sole negligence of the Indemnitees.

11. Insurance

Supplier agrees to effect and maintain continuously throughout the Term of this Agreement from companies acceptable to Hertz adequate Worker's Compensation, Commercial General Liability and Automobile Liability Insurance coverage for the Services to be provided herein. Supplier shall produce a Certificate of Insurance evidencing such insurance coverage upon the request of Hertz. All insurance policies of Supplier shall be primary to any self-insurance or insurance policies maintained by Hertz.

12. Right to audit

Supplier shall maintain records of all expenditures payable and/or reimbursable by Hertz under this Agreement ("**Records**"). Hertz may audit Supplier's records at any time prior to 2 years from final payment to verify Hertz's payment obligation to Supplier. Any overpayment by Hertz shall be promptly refunded upon notice and documentation of the same.

13. Term of Agreement

Unless agreed otherwise by the parties in the Reference Agreement, (a) this Agreement shall be for an initial term ("**Term**") of 365 days (measured from the Date of Order on the Purchase Order) unless terminated by Hertz in accordance with the provisions of Section 14; and (b) the Term shall then automatically renew for successive 365 day periods unless sooner terminated by either party with at least 30 days' advance written notice.

14. Termination

14.1 Hertz shall have the right at any time and for any reason to terminate this Agreement in whole or in part by giving Supplier 30 days' written notice whereupon all work and/or deliveries under this Agreement shall be discontinued. In such event, Hertz will pay to Supplier fair and reasonable compensation for work in process at the time of termination which is unique to Hertz and reasonably cannot be re-used for another Supplier client ("**Work in Process**"), but such compensation shall not include loss of anticipated profits or any consequential loss.

14.2 Hertz shall have the right at any time to terminate this Agreement immediately upon written notice to Supplier (and without any obligation to pay for Work in Process) if:

14.2.1 Supplier commits a breach of any of the terms and conditions of this Agreement and such breach is not cured within 10 days of receipt of notice of such breach from Hertz;

14.2.2 Any representation or warranty made by the Supplier is discovered to have been

false or misleading in a material way as of the date on which, or as of which, the same was made;

14.2.3 Supplier commits an act of bankruptcy within the meaning of the Federal Bankruptcy Code, or commences a bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceeding, which is not dismissed within 60 days of filing.

14.2.4 Supplier ceases or threatens to cease to carry on its business; or

14.2.5 The placement of a judgment lien, garnishment or levy against not less than 10% of the Supplier's assets, in terms of monetary value, which is not released within 30 days after the date of its attachment or the financial position of Supplier deteriorates to such an extent that in the opinion of Hertz the capability of Supplier adequately to fulfil its obligations under this Agreement has been placed in jeopardy.

14.3 The termination of this Agreement however arising will be without prejudice to the rights and duties of Hertz accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

15. Confidentiality/Data Protection

Subject to the terms and conditions of the Mutual Non-Disclosure Agreement between the parties (if any), each party undertakes that it will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information, including personally identifiable information concerning the business or affairs of the other party which may have or may in future come to its knowledge. Each party shall use at least the same degree of care in maintaining the confidentiality of any confidential information as it uses in maintaining the confidentiality of its own confidential information but in no event less than a reasonable degree of care. Any such confidential information shall only be used to fulfil each parties obligation under this Agreement. The parties recognize that a breach of the terms in Section 15 will cause irreparable harm that will be difficult or impossible to measure and that a breach of the provision will entitle the non-breaching party to immediate injunctive relief. The parties agree that the non-breaching party will be entitled to an award of reasonable attorneys' fees in the event that it is successful in an application for injunctive relief or in an action based upon a breach of Section 15.

16. Non-Solicitation

Neither party shall (except with the prior written consent of the other) during the Term and for a period of 12 months thereafter solicit the services of any personnel of the other party who have been engaged in the provision of the Goods and Services or the management of this Agreement other than by means of a national advertising campaign open to all comers and not specifically targeted at such staff of the other party. This shall not require either party to monitor the employees, subcontractors or other, that may provide services via an agreement with another subcontractor. The parties recognize that a breach of the terms in Section 16 will cause irreparable harm that will be difficult or impossible to measure and that a breach of the provision will entitle the non-breaching party to immediate injunctive relief. The parties agree that the non-breaching party will be entitled to an award of reasonable attorneys' fees in the event that it is successful in an application for injunctive relief or in an action based upon a breach of Section 16.

17. Remedies

Without prejudice to any other right or remedy which Hertz may have, if any of the Goods and Services are not supplied in accordance with, or Supplier fails to comply with, any of the terms of this Agreement, Hertz shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and Services have been accepted by Hertz:

17.1 To terminate this Agreement pursuant to Section 14.2 above;

17.2 To reject the Goods and Services (in whole or in part), and in the case of Goods return the Goods to Supplier at Supplier's risk and cost on the basis that a full refund for the rejected Goods shall be paid forthwith by Supplier (or, Hertz may withhold payment if payment for such Goods or Services has yet to be tendered);

17.3 to give Supplier the opportunity at Supplier's expense either to remedy any defect in the Goods and Services, to supply replacement Goods and Services, and to carry out any other work to ensure that the terms of this Agreement are fulfilled;

17.4 To refuse to accept any further deliveries of the Goods without any liability to Supplier;

17.5 To carry out at Supplier's expense any work necessary to make the Goods and Services comply with this Agreement; and/or

17.6 To claim such damages as may have been sustained in consequence of Supplier's breaches of this Agreement.

18. Assignment

18.1 Supplier cannot assign this Agreement or any part of it without the prior written consent of Hertz.

18.2 Hertz may assign this Agreement or any part of it to any person, firm or company.

19. No Third Party Beneficiaries

This Agreement is intended to be for the exclusive benefit of the parties executing it and their permitted successors and assignees. No other person or entity shall have rights hereunder whether as a third party beneficiary or otherwise.

20. Publicity

Supplier shall not advertise, publicly announce (except to the extent required by law or any regulatory authority) or refer in any of its promotional materials that it is supplying Goods and Services to Hertz without the prior written consent of Hertz. Without limiting any other remedies available to Hertz, if Hertz recognizes use of its name, logo, or any associated trademark of it or any of its subsidiaries without prior written consent, Hertz has the right to request such use immediately ceases.

21. Force Majeure

Hertz reserves the right to defer the Delivery Date or payment or to cancel this Agreement or reduce the volume of the Goods and Services ordered if Hertz and/or Supplier is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Hertz and/or Supplier including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

22. Severance

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

23. General

23.1 The failure of a party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any times or times thereafter.

23.2 Any notice required to be given under this Agreement shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post (airmail if to an address outside the country of posting) to the address of the relevant party as set out on the face of the Purchase Order, or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and when received (if sent by post).

24. Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any and all litigation between the parties related to this relationship or arising out of this Agreement will take place exclusively in the State of Florida and the parties hereby consent to the jurisdiction of the federal and/or state courts of Florida.

25. Relationship of the Parties

The relationship of the parties hereunder is that of independent contractors. This Agreement does not make either party the agent or legal representative of the other party. Neither party shall be held responsible for any obligation or liability incurred or assigned by the other party nor any of its contractors, except as specifically provided for in this Agreement. Supplier shall be responsible for all compensation payable to, and all income tax, social security, unemployment or other such withholding obligations with respect to Supplier's employees, agents or subcontractors.

26. Compliance with Laws

26.1 Supplier, and its agents and subcontractors shall comply with all applicable laws in connection with the Goods and Services under this Agreement.

26.2 Supplier and its subcontractors are notified they may be subject to the provisions of: 41 CFR Section 60-300.5(a); 41 CFR Section 60-741.5(a); 41 CFR Section 60-1.4(a) and (c); 41 CFR Section 60-1.7(a); 48 CFR Section 52.222-54(e); and 29 CFR Part 471, Appendix A to Subpart A with respect to affirmative action program and posting requirements. As applicable, **this Supplier and any subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of Protected Veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified Protected Veterans and Individuals with Disabilities.**

26.3 To the extent applicable to this Agreement, Supplier shall comply with, and in the performance of its obligations under this Agreement will not take any action or omit to take any action that would cause it to be in violation of the U.S. Foreign Corrupt Practices Act of 1977 and all regulations promulgated thereunder ("USFCPA"). Supplier shall exercise reasonable due diligence to verify its compliance and that of its subcontractors with the USFCPA and promptly notify Hertz regarding the discovery that Supplier or any subcontractor has failed to do so. Hertz has an unrestricted right to terminate the Agreement, and will have no further obligations hereunder, based on a reasonable belief that a subcontractor of Supplier has violated the USFCPA.

26.4 The Goods and Services hereunder will conform to all applicable Federal, State or local laws, ordinances or regulations relating to health and safety and conform to all requirements of the United States Department of Transportation and Department of Environmental Protection currently in effect or announced by such agencies at time of manufacture. Supplier, its employees, agents and subcontractors shall comply with all Hertz security and safety regulations in effect at any Hertz' facility that such person may visit.