

**CB Richard Ellis, Inc.**  
**Standard Terms and Conditions for the Purchase of Goods and Services**

**1. Definitions and Interpretation**

In these Terms and Conditions the following words shall have the following meanings:

"**CBRE**" or "**Owners Agent**" means CB Richard Ellis, Inc., acting as Agent for Owner, whose registered office is at 11150 Santa Monica Boulevard, Los Angeles, California 90025;

"**Owner**" means the client of CBRE which owns, leases or operates the property or business on which the Good or Service deliverables will be provided.

"**Price**" means the price for providing the Goods or Services as stated in the Purchase Order;

"**Purchase Order**" means the written order from CBRE for the Goods or Services which is hereby incorporated by reference into these Terms and Conditions;

"**Services**" means the Goods or Service deliverables as specified in the Purchase Order;

"**Seller**" means the person(s) or legal entity providing the Goods or Services to CBRE; and

"**Terms and Conditions**" means the contractual provisions specified herein which govern the terms of the Purchase Order agreement between CBRE and Seller.

**2. Basis of Contract**

Subject to any variation as provided for hereunder, any Purchase Order issued to Seller from CBRE shall be subject to these Terms and Conditions to the exclusion of all other terms and conditions (including without limitation any terms or conditions which the Seller purports to apply in any document whatsoever and whenever). Any variation to these Terms and Conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed by an authorized signatory of Owner or Owners Agent.

**3. Agency Relationship.**

Contractor acknowledges and agrees that CBRE is entering into any Purchase Order solely in its capacity as agent for Owner pursuant to the terms of CBRE's agreement or agreements with Owner. With respect to all contractual obligations, whether express or implied, entered into by and between CBRE and Contractor, whether pursuant to this Agreement or otherwise, Contractor and CBRE hereby acknowledge and agree that CBRE is entering into such obligations only in its capacity as Owner's agent and with respect to any and all obligations to be discharged on behalf of Owner or CBRE, Owner shall be, and hereby is acknowledged to be, the exclusive obligor hereunder. In connection therewith, CBRE shall bear no obligation, express or implied, with respect thereto, and Contractor shall not seek enforcement of any such obligation against CBRE, in CBRE's individual capacity or as Owner's agent hereunder, including without limitation, those obligations set forth under Section 7 below.

**4. Services & Deliverables.**

Seller agrees to perform the Services described in any Purchase Order, in accordance with the applicable Purchase Order, scope of work, price and with the terms specified herein. Upon acceptance of a Purchase Order, shipment of Goods or commencement of a Service, Seller shall be bound by these contractual terms, including all provisions set forth on the face of any applicable Purchase Order, whether Seller acknowledges or otherwise signs the Purchase Order, unless Seller objects to such terms in writing prior to shipping Goods or commencing the Services.

These Terms and Conditions may not be added to, modified, superseded or otherwise altered, except by writing signed by an authorized CBRE representative. Any terms or conditions contained in any acknowledgment, invoice or other communication of Seller, which are inconsistent with the Terms and Conditions herein, are hereby rejected. Owner or Owners Agent hereby reserve the right to reschedule any delivery or cancel any Purchase Order issued at any time prior to shipment of the Goods or prior to commencement of any Services. Owner or Owners Agent shall not be subject to any charges or other fees as a result of such cancellation.

**5. Delivery.**

Time is of the essence with respect to the performance of any Purchase Order issued by CBRE to Seller. Delivery of Goods shall be made pursuant to the schedule, via the carrier and to the place specified on the face of the applicable Purchase Order. Owner or Owners Agent reserve the right to return, shipping charges collect, all Goods received in advance of the delivery schedule. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of land transportation. If no method of shipment is specified in the Purchase Order, Seller shall use the least expensive carrier reasonably available. In the event Seller fails to deliver the Goods within the time specified, Owner or Owners Agent may, at its option, decline to accept the Goods and terminate the Purchase Order. Seller shall package all items in suitable containers to permit safe transportation and handling. Each delivered container must be labeled and marked to identify contents without opening and all boxes and packages must contain packing sheets listing the contents. CBRE's purchase order number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading.

**6. Risk of Loss & Destruction of Goods.**

Seller assumes all risk of loss until receipt by Owner or Owners Agent. Title to the Goods shall pass to CBRE upon its receipt of the Goods at the designated destination. If the Goods ordered are destroyed prior to title passing to Owner or Owners Agent, Owner or Owners Agent may at its option cancel the Purchase Order or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, Owner or Owners Agent shall have the right to require delivery of the Goods not destroyed.

**7. Payment.**

As full consideration for the performance of the Services, delivery of the Goods and the assignment of rights to Owner as provided herein, Owner or Owners Agent shall pay Seller the amount agreed upon and specified in the applicable Purchase Order. Seller shall submit invoices to CBRE within thirty (30) days of delivery of the Goods or completion of the Services performed under the Purchase Order. All Seller invoices shall be in a form acceptable to Owner or Owners Agent and must contain, as a minimum, (i) Seller's name, complete remittance address information and taxpayer identification number; (ii) invoice date; (iii) purchase order number; (iv) as applicable, serial number, price and quantity of Goods delivered or description of Services provided; and (v) additional information as may be required by Owner or Owners Agent. Applicable taxes and other charges such as shipping costs, duties, customs, tariffs, imposts and government imposed surcharges shall be stated separately on Seller's invoice. All personal property taxes assessable upon the Goods prior to receipt by Owner or Owners Agent of Goods conforming to the Purchase Order shall be borne by Seller. Any undisputed sum due Seller pursuant to the Purchase Order shall be payable within sixty (60) days of receipt by Owner or Owners Agent of an invoice meeting the requirements of this section and CBRE reserves the right to return all incorrect invoices. Payment shall not constitute acceptance. Seller shall invoice CBRE only for all Goods delivered and all Services actually performed. CBRE shall be obligated to pay Seller only to the extent that it has received payment from Owner for the Goods delivered and Services performed by Seller. Owners Agent shall make commercially reasonable efforts to enforce Owner's responsibility for payment.

**8. Warranties.**

**7.1 Services:** Seller represents and warrants that all Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is customary for professional providers of like services within the same industry as Seller. Further, Seller represents and warrants that the Services shall be completed in accordance with the applicable specifications and shall be correct and appropriate for the purposes contemplated in the Purchase Order. Seller represents and warrants that the performance of Services under this Agreement will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which Seller is bound.

**7.2 Goods:** Seller warrants that all Goods provided will be new and will not be used or refurbished. Seller warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications for a period of twelve (12) months from the date of acceptance by Owner or Owners Agent or for the period provided in Seller's standard warranty covering the Goods, whichever

is longer. Additionally, Goods purchased shall be subject to all written and oral express warranties made by Seller's agents, and to all warranties provided for by the Uniform Commercial Code of the applicable State. Seller shall furnish to CBRE Seller's standard warranty and service guaranty applicable to the Goods. All warranties and Service guaranties shall run both to CBRE and to Owner.

If Owner or **Owners Agent** identifies a warranty problem with the Goods during the warranty period, Owner or **Owners Agent** will promptly notify Seller of such problems and will return the Goods to Seller, at Seller's expense. Within five (5) business days of receipt of the returned Goods, Seller shall, at Owner's or **Owners Agent**'s option, either repair or replace such Goods, or credit the proper account for the same. Replacement and repaired Goods shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer.

#### **9. Inspection.**

CBRE shall have a reasonable time after receipt of Goods or Service deliverables and before payment to inspect them for conformity hereto, and Goods received prior to inspection shall not be deemed accepted until Owner or **Owners Agent** has determined whether the Goods conform to the specifications hereof. If Goods tendered do not wholly conform with the provisions hereof, Owner or **Owners Agent** shall have the right to reject such Goods. Nonconforming Goods will be returned to Seller freight collect and risk of loss will pass to Seller upon CBRE's delivery to the common carrier.

#### **10. Independent Contractor.**

Nothing contained in the Purchase Order, these Terms and Conditions or in the relationship of Seller and Owner or **Owners Agent** shall be deemed to constitute a partnership, joint venture, or any other business relationship between Seller and CBRE except for the independent contractor relationship described in these Terms and Conditions. Seller's authority is limited solely to performing the Services set forth herein in accordance with the terms of the Purchase Order. Nothing in these Terms and Conditions shall create any contractual relationship or liabilities between Seller or any agent or subcontractor of Seller and Owner or **Owners Agent**.

#### **11. Taxes.**

Seller shall pay any and all taxes and fees imposed by Law in connection with the performance of the Goods and Services deliverable under the Purchase Order, unless Owner or **Owners Agent** provides Seller with a valid certificate of exemption from sales tax liability. Any applicable sales or use taxes due in connection with the performance of Services or sale of Goods shall be the responsibility of Seller to collect and pay. This provision shall survive the expiration or termination of the Purchase Order.

#### **12. Insurance.**

The minimum amounts and scope of insurance coverage required under this Agreement to be maintained by Seller, at its sole cost and expense, covering the activities of Seller, its employees, agents and subcontractors under the Purchase Order are set forth below.

**12.1 Commercial General Liability:** \$2,000,000 per occurrence and \$2,000,000 aggregate limit.

**12.2 Automobile Liability:** \$1,000,000 combined single limit per occurrence.

**12.3 Worker's Compensation:** Statutory

**12.4 Employer's Liability:** \$1,000,000 per accident per employee; \$1,000,000 per disease per employee; and \$1,000,000 per disease policy limit.

**Policy Requirements.** All insurance policies shall be in customary forms and shall be issued by companies licensed to do business in the states where the Owner Facilities are located, and rated "A," FSC Class X or better by the most current Best's Insurance Reports. If required by CBRE, Seller shall deliver certificates evidencing such insurance coverage to CBRE prior to execution of the Purchase Order. The certificate(s) shall include copies of endorsements to Seller's Workers Compensation and Automobile policies that show that Owner and CBRE (including all participating affiliates) are included as additional insured(s) on ISO Form CG 20 10 11 85 or its equivalent, covering the additional insureds for liability arising from all operations and completed operations of Seller as long as the additional insureds may be exposed to liability arising from Seller's work. Seller shall be responsible for the amount of any deductible contained in any of the above-described insurance policies and certificates of insurance. Seller's insurance shall be deemed primary with respect to coverage extended to the additional insureds, whose insurance shall be excess and non-contributory with that required of Seller hereunder. To the fullest extent permitted by law, all insurance policies of Seller shall contain provisions that the insurance companies waive the rights of recovery or subrogation against Owner, CBRE, their respective affiliates, and each of their and their affiliates' respective agents, officers, directors, shareholders, invitees, nominees, employees, co-lessees, co-venturers, contractors, subcontractors, insurers, successors and assigns.

#### **13. Indemnity.**

To the fullest extent permitted by law, Seller shall defend, indemnify, pay, save and hold harmless CBRE and Owner from and against any liabilities, damages costs, expenses, suits, losses, claims, actions, fines and penalties (including, without limitation, court costs, reasonable attorneys' fees and any other reasonable costs of litigation) (hereinafter collectively, the "Claims") that CBRE and Owner may suffer, sustain or incur arising out of or in connection with: (i) the negligent acts, errors or omissions, intentional misconduct or fraud of Seller, its employees, subcontractors or agents, whether in the provision of the Services, failure to provide any or all of the Services or otherwise; (ii) any breach by Seller of these Terms and Conditions; (iii) assertions under workers' compensation or similar employee benefit acts by Seller or its employees or agents, and/or any failure by Seller to pay any employment benefits and any taxes required of it of any nature whatsoever; (iv) Seller's failure to comply with any Law; (v) Claims by any Seller Employee; and/or (vi) any infringement or alleged infringement of any patent, copyright, trade secret or other proprietary right of any third party relating to the Services performed under the Purchase Order. Nothing contained herein shall relieve Seller of any responsibility for Claims regardless of whether Seller is required to provide insurance covering such Claims.

#### **14. Confidentiality.**

It is understood that information, data, software, communications and materials, in whatever form presented, Owner or **Owners Agent**, their affiliates and/or their customers including, without limitation, customer or supplier names or information (collectively, "Confidential Information") may be disclosed to Seller. Seller agrees to utilize the Confidential Information received by it only for the purpose of providing the Services and for no other purpose whatsoever. Seller shall not disclose to any person (other than as necessary to Seller Employees directly involved in the Seller's provision of the Services) Confidential Information at any time during the Term or at any time thereafter, without the express written agreement of Owner or **Owners Agent**. Seller acknowledges and agrees that, because it may be difficult to assess the damages incurred by Owner or **Owners Agent** from a breach of this Section, Owner or **Owners Agent** shall have the right, in addition to any other legal and equitable remedies available, to injunctive relief to prevent any potential breach or further breach of this Section.

Seller shall not be liable for disclosure or use of any Confidential Information if: (i) it was in the public domain at the time it was disclosed or used through no fault of Seller; (ii) it becomes known to the Seller from a source other than CBRE without a breach of these Terms and Conditions by Seller; (iii) it was independently developed by Seller without the benefit of the information received from Owner or **Owners Agent**; or (iv) it was disclosed under legal process or other legal requirement provided Seller agrees to cooperate in seeking reasonable protective arrangements requested by Owner or **Owners Agent**, and to promptly notify Owner or **Owners Agent** if Seller receives any subpoena or other legal process seeking disclosure of Confidential Information. Seller shall not use or display Owner's or **Owners Agent**'s name or logo, and shall not utilize other trademarks or service marks of Owner or **Owners Agent**, without the prior written consent of Owner or **Owners Agent**, as applicable. Neither Seller nor its agents or subcontractors may issue any press, media or publicity releases or give statements to the media identifying Owner or **Owners Agent** or relating to this Purchase Order without the prior written consent of Owner or **Owners Agent**, as applicable.

#### **15. Work Product.**

As used herein, "Work Product" means collectively all information, materials, products, drawings, specifications, reports, proposals, and any other items, in any medium, and any ideas, designs, concepts, techniques, inventions, discoveries, improvements, software, documentation, original works of authorship and any other work products discovered, prepared or developed by or for Seller or its employees for Owner or **Owners Agent** in

connection with Services under the Purchase Order or in the course of or as a result of the Services performed or provided. Work Product shall be promptly disclosed and furnished to Owner or **Owners Agent**. All right, title and interest in and to the Work Product shall vest in Owner or **Owners Agent** and shall be deemed to be works made for hire. To the extent the Work Product may not be considered a work made for hire, Seller assigns to Owner or **Owners Agent** all right, title and interest in and to the Work Product, including rights to copyrights in all copyrightable materials and in and to all patents that may be issued thereon. If the Work Product includes items previously developed or copyrighted by Seller or a third party, Seller hereby grants to Owner or **Owners Agent** an unrestricted, royalty-free, perpetual, irrevocable license to make, have made, copy, use, modify, distribute, prepare derivative works, perform, display, disclose and sublicense such Work Product for any lawful purpose.

#### **16. Non-Solicitation.**

During the Term of this Agreement, Seller shall not directly or indirectly hire, permit the employment of, or solicit to hire any personnel of Owner or **Owners Agent** unless expressly agreed otherwise in writing by the applicable party.

#### **17. Termination.**

Owner or **Owners Agent** may terminate the Purchase Order upon written notice to Seller if Seller fails to perform or otherwise breaches the terms of the Purchase Order, files a petition in bankruptcy, becomes insolvent, or dissolves. In the event of such termination, Owner or **Owners Agent** shall pay Seller for the portion of the Services satisfactorily performed and those conforming Goods delivered to Owner or **Owners Agent** through the date of termination, less appropriate offsets, including any additional costs to be incurred by Owner or **Owners Agent** in completing the Services.

Owner or **Owners Agent** may terminate the Purchase Order, without cause, for any reason upon thirty (30) days' written notice to Seller. Seller shall cease to perform Services and/or provide Services under the Purchase Order on the date of termination specified in such notice. In the event of such termination, Owner or **Owners Agent** shall be liable to Seller only for those Services satisfactorily performed and those conforming Goods delivered to Owner or **Owners Agent** through the date of termination, less appropriate offsets.

In the event CBRE's services have been terminated by Owner or CBRE's agreement with Owner expires, and either Owner or Owner's designee determines to continue performance of this Purchase Order and require Seller to continue to perform the Services hereunder, CBRE will not be subject to any fee, liability or penalty as a result thereof, and CBRE shall have no responsibility to Seller whatsoever after the date upon which CBRE shall no longer provide services to Owner.

Upon the expiration or termination of the Purchase Order for any reason, each party will be released from all obligations to the other arising after the date of expiration or termination, except for those which by their terms survive such termination or expiration.

#### **18. Disputes.**

Any controversy, claim, counterclaim or dispute arising out of or relating to the interpretation or application of any term or provision of the Purchase Order or these Terms and Conditions that the parties are unable to settle through consultation and negotiation shall be subjected by either party in any court of competent jurisdiction to the extent said Court shall have jurisdiction over the matter. Seller agrees that in the event of any dispute between the parties, it will continue to provide Services without interruption unless CBRE directs otherwise in writing. Further, Seller acknowledges that Seller's breach of any of the promises contained in these Terms and Conditions may result in irreparable and continuing damage to Owner or **Owners Agent** for which there may be no adequate remedy at law and, in the event of such breach, Owner or **Owners Agent** will be entitled to seek injunctive relief, or a decree of specific performance.

#### **19. Force Majeure.**

Except as hereinafter provided in this provision, no delay or failure in performance by a party to this Agreement shall constitute a default under the Purchase Order if and to the extent the delay or failure is caused by Force Majeure. Unless the Force Majeure substantially prevents performance of the Services, Force Majeure shall not operate to excuse, but only to delay, performance of the Services. If the Services are delayed by reason of Force Majeure, Seller shall promptly notify Owner or **Owners Agent** of such condition. Once the Force Majeure event ceases, Seller shall resume performance of the Services as soon as possible. As used herein, "Force Majeure" means any event beyond the control of the Party claiming inability to perform its obligations and which such Party is unable to prevent by the exercise of reasonable diligence, including, without limitation, the combined action of workers, strikes, embargoes, fire, acts of terrorism, explosions and other catastrophes, casualties, a moratorium on construction, delays in transportation, governmental delays in granting permits or approvals, changes in laws, expropriation or condemnation of property, governmental actions, unavailability or shortages of materials, national emergency, war, civil disturbance, floods, unusually severe weather conditions or other acts of God or public enemy. Financial hardship, however, shall not constitute Force Majeure regardless of the cause thereof and whether the reason is outside a Party's control.

#### **20. Limitation of Liability.**

In no event shall Owner or **Owners Agent** be liable to Seller for any lost or prospective profits or any other punitive, consequential, incidental or indirect loss or damage, whether based in contract, strict liability, tort or otherwise, with respect to the Purchase Order.

#### **21. Assignment.**

Seller may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of Owner or **Owners Agent**. Any assignment or transfer without such written consent shall be null and void. Owner or **Owners Agent** may, without the consent of Seller, and at the sole discretion of Owner or **Owners Agent**, freely assign its interest in this Purchase Order.

#### **22. Notices.**

Any and all notices, consents, demands, approvals, directives or other communications required or permitted under the Purchase Order shall be in writing and shall be delivered personally, by air or local courier or shall be sent by certified mail, return receipt requested, postage prepaid to the other party at the address set forth in the Purchase Order. A copy of any notice to CBRE also shall be sent to it at 2001 Ross Avenue, Suite 3400, Dallas, Texas 75201, Attn: Division General Counsel. Either party hereto may change its address set forth herein for the receipt of notice by giving written notice to the other party in the manner set forth herein. The date of delivery or the date of receipt, as the case may be, shall be the date of such notice. In the event that such notice is refused, the date of such refusal shall be deemed to be the date of receipt or delivery hereunder.

#### **23. Survival of Obligations.**

Any obligations and duties which by their nature extend beyond the expiration or termination of the Purchase Order shall survive the expiration or termination of the Purchase Order.

#### **24. Governing Law.**

This Agreement shall be construed in accordance with, and disputes shall be governed by, the laws of the state in which the Services are performed or the Goods are delivered.

#### **25. Compliance with Laws.**

Seller represents warrants and covenants that Seller possesses and shall maintain at its own expense all permits, licenses, approvals, registrations, consents and certificates and pay all fees required by law with respect to any Goods or Services procured under the Purchase Order. Seller shall, in connection with performance, comply with all applicable federal, state, and local laws, ordinances, rules, regulations, building codes, court orders, and governmental or regulatory agency orders.

#### **26. Miscellaneous**

**26.1 Headings:** The section headings appearing in these Terms and Conditions have been inserted for the purpose of convenience and ready reference. They do not purport, and shall not be deemed, to define, limit or extend the scope or intent of the respective Sections.

**26.2 Entire Agreement:** This Purchase Order, when fully executed, shall supersede any and all prior and existing agreements between the parties, either oral or in writing, and contains all the covenants and agreements between the parties with respect to the subject matter of the Purchase Order. Any amendment or modification to the Purchase Order must be made in writing and signed by the parties hereto.

**26.3 Waiver:** No term or provision of these Terms and Conditions shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, or waiver of, or excuse for any other different or subsequent breach.

**26.4 Multiple Copies:** The Purchase Order and these Terms and Conditions may be reproduced in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

**26.5 Authority to Execute Purchase Order:** Seller warrants and represents that it is authorized to enter into the Purchase Order including these Terms and Conditions, and that the person signing on its behalf is duly authorized to execute said Purchase Order, and that no other signatures are necessary.

**26.6 Severability:** If any part, term, or provision of these Terms and Conditions is held by final judgment of any court of competent jurisdiction to be illegal, invalid or unenforceable, the validity of the remaining portions or provisions shall not be impaired or affected, and the rights and obligations of the parties shall be construed and enforced as if the Purchase Order and these Terms and Conditions did not contain the particular part, term or provision held to be illegal, invalid or unenforceable.