

**FleetPride, Inc.**  
**Standard Terms and Conditions of Purchase**

1. **Terms of Agreement:** The following terms and conditions of sale (these “*Standard Terms and Conditions*”) contain general provisions applicable to all FleetPride, Inc. (“*FleetPride*”) supply quotations, purchase orders and product purchases. The purchase order, together with these Standard Terms and Conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively, the “*Purchase Order*”), constitutes the entire and exclusive agreement between FleetPride and the supplier identified in the Purchase Order (the “*Supplier*”) relating to the sale of the goods identified in the Purchase Order (the “*Goods*”). FleetPride’s submission of the Purchase Order is conditioned on Supplier’s agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Supplier purports to condition its acceptance of the Purchase Order on FleetPride’s agreement to such different or additional terms. Supplier’s electronic acceptance, acknowledgement of the Purchase Order, or commencement of performance constitutes Supplier’s acceptance of these Standard Terms and Conditions. The Purchase Order does not constitute a firm offer within the meaning of the Texas Business and Commerce Code, and may be revoked at any time prior to acceptance. Notwithstanding the foregoing, if a master agreement covering procurement of the Goods described in the Purchase Order exists between Supplier and FleetPride, the terms of such master agreement shall prevail over any inconsistent terms herein.
  
2. **Delivery:**
  - (a) Time is of the essence in Supplier’s performance of its obligations under the Purchase Order. Supplier will immediately notify FleetPride if Supplier’s timely performance under the Purchase Order is delayed or is likely to be delayed. FleetPride’s acceptance of Supplier’s notice will not constitute FleetPride’s waiver of any of Supplier’s obligations.
  
  - (b) If Supplier delivers Goods after the date or dates specified in the Purchase Order by which the Supplier is required to deliver the Goods, FleetPride may reject such Goods.

- (c) FleetPride will hold any Goods rejected under any Purchase Order at Supplier's risk and expense, including storage charges, while awaiting Supplier's return shipping instructions. Supplier will bear all return shipping charges, including without limitation, insurance charges FleetPride incurs on Supplier's behalf. FleetPride may, in its sole discretion, destroy or sell at a public or private sale any rejected Goods for which FleetPride does not receive return shipping instructions within a reasonable time, and apply the proceeds, if any, first toward any storage charges.
- (d) Supplier will preserve, pack, package and handle the Goods so as to protect the Goods from loss or damage and in accordance with best commercial practices in the absence of any specifications FleetPride may provide. Without limiting the foregoing, Supplier shall observe the requirements of any local laws and regulations relating to hazardous Goods, including, without limitation, with respect to its accompanying information, packaging, labeling, reporting, carriage and disposal.
- (e) Supplier will include with each delivery of Goods a packing list identifying the Purchase Order number, the FleetPride part number for each of the Goods (if applicable), a description and the quantity (including unit of measure) of each of the Goods, and the date of shipment.
- (f) Unless FleetPride expressly instructs otherwise, Supplier will deliver all Goods to FleetPride's location at the address set forth in the Purchase Order. Seller assumes responsibility for all shipping and delivery charges, including, without limitation, customs, duties, costs, taxes and insurance. Risk of loss of the Goods passes to FleetPride upon acceptance in accordance with Section 4 of these Standard Terms and Conditions. Supplier shall bear all responsibility for loss or damage to the Goods while in transit whether caused by acts or omissions of Supplier, the transporting carrier or otherwise. FleetPride and Supplier shall each cooperate fully with the other or its insurer in connection with the filing and enforcing of claims for loss or damage to the Goods during transit.

### **3. Price and Payment:**

- (a) Unless otherwise specified in the Purchase Order, the price for the Goods includes all taxes and other charges, such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges. Supplier will, at FleetPride's request, break-

out from the price all such taxes and other charges, in its invoices. Supplier shall use its best efforts to assist FleetPride in all legal efforts to minimize the taxes resulting from the performance of this Purchase Order.

- (b) Unless otherwise specified in the Purchase Order, FleetPride will pay Supplier the price set forth in the Purchase Order within 30 days following FleetPride's receipt of an invoice for the Goods. All invoices must include the Purchase Order number and separately list all freight, handling, fuel or other service charges. Payment will be in United States dollars. FleetPride may, at any time, set-off any amounts Supplier owes FleetPride against any amounts FleetPride owes to Supplier or any of its affiliated companies.

**4. Inspection and Acceptance:** FleetPride may reject any or all of the Goods which do not conform to the applicable requirements within ten (10) business days of Supplier's delivery of the Goods. At FleetPride's option, FleetPride may (a) return the non-conforming Goods to Supplier for a refund or credit; (b) require Supplier to replace the non-conforming Goods; or (c) repair the non-conforming Goods so that it meets the requirements. As an alternative to (a) through (c) above, FleetPride may accept the non-conforming Goods conditioned on Supplier providing a refund or credit in an amount FleetPride reasonably determines to represent the diminished value of the non-conforming Goods. FleetPride's payment to Supplier for Goods prior to FleetPride's timely rejection of such Goods as non-conforming will not be deemed as acceptance by FleetPride.

**5. Remedies:**

- (a) Breach. Supplier's and FleetPride's rights and remedies for breach of the Purchase Order or any express or implied warranties that arise in connection herewith shall be those remedies provided in the Texas Business and Commerce Code.
- (b) **INDEMNIFICATION FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. SUPPLIER SHALL DEFEND AND INDEMNIFY AND HOLD HARMLESS FLEETPRIDE, ITS AFFILIATES, SUBSIDIARIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL LIABILITY, DAMAGE, CLAIM, LOSS AND EXPENSE (INCLUDING REASONABLE ATTORNEY'S FEES), ARISING OUT OF OR IN ANY WAY CAUSED BY OR RESULTING FROM ANY CLAIM FOR**

**ACTUAL OR ALLEGED TRADEMARK, TRADE DRESS, TRADE NAME, SERVICE MARK, PATENT OR COPYRIGHT INFRINGEMENT IN CONNECTION WITH THE MANUFACTURE, SALE OR USE OF THE GOODS (EXCEPT TO THE EXTENT THAT ANY SPECIFICATIONS OF FLEETPRIDE PREVENT SUPPLIER FROM SUPPLYING NON-INFRINGEMENT GOODS). IMMEDIATELY UPON RECEIPT FROM FLEETPRIDE OF WRITTEN NOTICE OF ANY SUCH CLAIM, SUPPLIER SHALL APPEAR IN AND ASSUME THE DEFENSE OF THE CLAIM. IN THE EVENT OF INFRINGEMENT SUPPLIER SHALL, AT ITS OPTION, EITHER PROCURE FOR THE BENEFIT OF FLEETPRIDE THE RIGHT TO CONTINUE USING THE GOODS OR PROMPTLY REPLACE THE GOODS WITH A NON-INFRINGEMENT SUBSTITUTE SATISFACTORY TO FLEETPRIDE.**

- (c) **INDEMNIFICATION. SUPPLIER SHALL DEFEND AND INDEMNIFY, AND HOLD HARMLESS FLEETPRIDE, ITS AFFILIATES, SUBSIDIARIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AND EMPLOYEES, FROM AND AGAINST, ANY AND ALL DAMAGES, CLAIMS, LIABILITIES, LOSSES OR EXPENSES (INCLUDING ACTUAL ATTORNEYS' FEES, INTERNAL COSTS ASSOCIATED WITH INTERNAL ATTORNEY WORK AND EXPERT FEES), INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DAMAGES, CLAIMS, LIABILITIES, LOSSES OR EXPENSES INVOLVING DAMAGE TO PROPERTY, DEATH OR PERSONAL INJURY, ARISING OUT OF OR IN ANY WAY RESULTING FROM, IN WHOLE OR IN PART, ANY DEFECT IN THE GOODS OR THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF SUPPLIER, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS. THIS INDEMNIFICATION SHALL BE IN ADDITION TO THE WARRANTY OBLIGATIONS OF SUPPLIER. SUPPLIER SHALL MAINTAIN ADEQUATE INSURANCE TO SATISFY ITS OBLIGATIONS TO FLEETPRIDE HEREUNDER, INCLUDING, BUT NOT LIMITED TO, GENERAL LIABILITY, PUBLIC LIABILITY, EMPLOYER'S LIABILITY AND WORKERS' COMPENSATION INSURANCE.**
- (d) **SUPPLIER SHALL COMPLY WITH ALL LEGAL REQUIREMENTS, RULES, AND REGULATIONS RELATING TO THE MANUFACTURING, PACKAGING, AND LABELING OF THE GOODS BY SUPPLIER AND SHALL BE SOLELY RESPONSIBLE AND THE COSTS ASSOCIATED THEREWITH. SUPPLIER SHALL INDEMNIFY AND HOLD HARMLESS**

**FLEETPRIDE, ITS AFFILIATES, SUBSIDIARIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AND EMPLOYEES, FROM ANY AND ALL EXPENSES ARISING OUT OF OR RELATING TO SUPPLIER'S FAILURE TO COMPLY, IN WHOLE OR IN PART, WITH THE LEGAL REQUIREMENTS, RULES, AND REGULATIONS RELATING TO THE MANUFACTURING, PACKAGING, DESIGN, QUALITY, SAFETY, PACKAGING, AND/OR LABELING OF THE GOODS BY SUPPLIER.**

**6. Express Warranties:**

- (a) Supplier expressly warrants that at the time of transfer of title to the Goods to FleetPride, (1) Supplier has good and marketable title to the Goods and the Goods shall be free and clear of all defects of title, liens, security interests and other encumbrances of any nature whatsoever, and (2) the Goods are being sold in compliance with the Robinson-Patman Act. If requested by FleetPride, Supplier will furnish a bill of sale and certificate of no liens for the Goods in a form satisfactory to FleetPride.
- (b) Supplier expressly warrants that all Goods furnished under the Purchase Order will be new, and will be free from defects in design, materials and workmanship. Supplier further warrants that all Goods will be merchantable and will be safe and appropriate for the purposes for which Goods of that kind are normally used. Inspection, testing, acceptance or use of the Goods acquired by FleetPride under the Purchase Order shall not affect the Supplier's obligations under the warranties set forth in this Section 6, and all such warranties shall survive inspection, test, sale and use.
- (c) Supplier expressly warrants that the prices for the Goods sold to FleetPride hereunder are not less favorable than those currently extended to any other customer for the same or similar quantities. In the event Supplier reduces its price for such Goods to any customer, Supplier agrees to inform FleetPride and reduce the prices hereof accordingly.
- (d) Supplier has complied, and shall continue to comply, with all applicable laws, rules, and regulations relating to the operation of Supplier's business as such laws, rules and regulations relate to the manufacture and sale of the Goods.

7. **Non-Exclusivity:** It is expressly understood and agreed that neither any Purchase Order nor any amendments or extensions thereof, constitute a “requirements contract” under the Uniform Commercial Code as adopted by the State of Texas or any other law, nor do they constitute any obligation by either party hereto to deal exclusively with the other during the term of the Purchase Order.
  
8. **Placing Orders:** FleetPride may issue Purchase Orders to Supplier via facsimile, via nationally recognized private courier, or electronically, and shall be deemed to be received by Supplier (a) upon receipt of confirmation from the sending fax machine, if sent by fax, (b) upon delivery at the address of the Supplier if sent by nationally recognized private courier and (c) upon receipt of confirmation from the delivery apparatus or mechanism if delivered electronically.
  
9. **Documentation:**
  - (a) Supplier shall obtain, prepare, and maintain copies of all documentation required for customs entries of the Goods and hereby warrants that such documentation shall be accurate in all respects.
  
  - (b) Supplier shall maintain complete records of the quantity of Goods produced pursuant to the Purchase Order.
  
10. **Term and Termination:**
  - (a) The Purchase Order will remain in effect with respect to any order for Goods already issued to Supplier until such Purchase Order is either terminated or the Goods are delivered and accepted.
  
  - (b) FleetPride may terminate the Purchase Order at anytime, for no reason or for any reason, upon fifteen (15) days written notice to Supplier. Upon receipt of notice of such termination, Supplier will inform FleetPride of the extent to which it has completed performance as of the date of the notice. FleetPride will pay Supplier for all Goods delivered and accepted through the effective date of the termination, provided that FleetPride will not be obligated to pay any more than the payment that would have become due had Supplier completed and FleetPride accepted the Goods. FleetPride will have no further payment obligation in connection
  
  - (c) Either party may terminate the Purchase Order immediately by delivering written notice to the other party upon the occurrence of

any of the following events: (i) a receiver is appointed for either party or its property, (ii) either makes a general assignment for the benefit of its creditors, (iii) either party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, if such proceedings are not dismissed within sixty (60) days; or (iv) either party is liquidating, dissolving, or ceasing to do business in the ordinary course.

- (d) FleetPride may immediately terminate the Purchase Order upon written notice to Supplier if there is a change in ownership representing twenty percent (20%) or more of the equity ownership of Supplier.
- (e) Either party may terminate the Purchase Order immediately by delivering written notice to the other party for any material breach not cured within 30 days of receipt of notice of the breach. FleetPride shall have no further payment obligation to Supplier under any terminated Purchase Order if FleetPride terminates the Purchase Order under this Section 10(e).
- (f) Any obligations or 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.

**11. Assignment:** Supplier may not assign any of its rights or delegate any of its obligations under the Purchase Order without FleetPride's prior written consent, which FleetPride will not unreasonably withhold. FleetPride may, at its option, void any attempted assignment or delegation undertaken without FleetPride's prior written consent. Supplier may not subcontract any of its rights or obligations under the Purchase Order without FleetPride's prior written consent. If Supplier fails to timely pay a subcontractor for work performed, FleetPride will have the right, but not the obligation, to pay the subcontractor and offset any amount due to Supplier by an amount paid to the subcontractor. Supplier will defend, indemnify and hold FleetPride harmless for all damages and costs of any kind, without limitation, incurred by FleetPride and caused by Supplier's failure to pay a subcontractor. To the extent allowed by applicable law, no person who is not a party to a Purchase Order shall be entitled to take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

**12. Waiver:** The waiver by FleetPride of any term, provision or condition hereunder must be in writing and shall not be construed to be a waiver of any other term, condition or provision hereof, nor shall such waiver be

deemed a waiver of any breach of the same condition or provision at any other time relating to this order or any other order.

- 13. Governing Law:** The terms of the Agreement, shall be governed by the laws of the State of Texas, without regard to its conflict of law provisions. The parties specifically waive application of the UN Convention on Contracts for the International Sale of Goods. Supplier irrevocably consents to the personal jurisdiction of the state and federal courts in and for Harris County, Texas, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.
- 14. Cores:** If Supplier supplies Goods that carry a core charge, Supplier will comply with the following:
- (a) Supplier will provide to the FleetPride Corporate Core Administrator a monthly core report that shows:
    - purchases by core groups (both positive and negative)
    - a month by month statement of activity by each core group for each region
  - (b) Supplier will supply a written policy on its freight policy. If Supplier has a pick up and delivery service, a monthly schedule shall be supplied for each FleetPride location.
  - (c) If Supplier has an up front core charge, it shall have at least a full twelve-month period for returning of cores after the core billing becomes due.
  - (d) If Supplier has a delayed core billing (90 days), it will have at least a six-month period for returning cores.
  - (e) All banked (over returned) cores will continue to be the property of FleetPride for twelve months. At the end of twelve months FleetPride will make one of the following dispositions:
    - have the cores returned freight collect to a designated location
    - sell the cores to Supplier at an agreeable price
    - transfer the core value to another core group at one-half of the Supplier core value as directed by the FleetPride Corporate Core Administrator



- (f) Supplier will allow a monthly transfer of core value to another FleetPride region as directed by the corporate core administrator.
- (g) Supplier will buy extra cores from FleetPride at a negotiated price. The corporate core representative will administrate this process.
- (h) Supplier will issue all core credits within forty-five (45) days after the cores have been shipped from FleetPride to Supplier's place of business. On the 46<sup>th</sup> day FleetPride will deduct the value of the core shipment from the monthly statement.
- (i) Supplier core charges will only be changed annually (on January 1<sup>st</sup> of each year).
- (j) If Supplier does a stock lift on product that has core charges, it will issue core credit based upon current core pricing. Upon a Supplier change all cores will be returned to a FleetPride location, freight prepaid, at the direction of the Director of Purchasing or Corporate Core Administrator.
- (k) All of the above information will be available the first of each month using the Internet, or other electronic means. If Supplier is unable to comply with this requirement, Supplier will deliver by overnight courier the information to the appropriate FleetPride representative.