



Purchase Order Terms & Conditions

Section 1 General Terms and Conditions

- Parties:** The purchaser of the goods or services will be referred to as “Buyer” and the supplier of goods or services under this Contract will be referred to as “Seller”. Seller and Buyer shall individually be referred to as a “Party” and collectively as the “Parties.”
- Acceptance:** The Purchase Order and these Purchase Order Terms and Conditions (collectively referred to as the “Contract”) are expressly limited to the terms and conditions stated by Buyer herein. No purchase orders, confirming orders, or other documentation, written or oral, by Seller modifies, alters or changes the express written terms of this Contract. If any additional or different terms are proposed by Seller while accepting this Contract, including strikeouts of language in this form, such additional or different terms will be considered as a proposal by Seller for a modification of this Contract and will be effective only if expressly accepted in writing by Buyer. The return of an acceptance copy signed by Seller, the shipping of any of the goods or the performance of any of the services, constitutes acceptance by Seller of this Contract.
- Assignments or Subcontracts:** Seller will not assign or subcontract this Contract in whole or in part without Buyer’s prior written consent. The term “subcontractor” includes all materialmen, suppliers and sub-subcontractors who have entered into a contract, expressed or implied, with Seller to perform a portion of the services or supply the goods under this Contract.
- Set-Off:** Buyer may credit any amount which Seller owes to Buyer under this Contract or any other contract, or based upon any other claim or right, against any amounts which Buyer owes to Seller under this Contract.
- Time of Delivery for Performance:** Time Is of The Essence. Buyer reserves the right to cancel this Contract or any part of it and reject delivery of goods or performance of services if (1) Seller has not delivered the goods or started or completed performance of the services by the time specified in this Contract (or within a reasonable time if not otherwise specified), or (2) if Seller’s delivery of goods or performance of services is not in accordance with the Contract specifications. Seller will be liable to Buyer for all loss and damage sustained by Buyer as a result of Seller’s delay or failure, with the exception of delays beyond Seller’s reasonable control. Buyer will not be required to notify Seller of Seller’s default or otherwise put Seller in default. Upon exercising its right to terminate, Buyer’s sole liability to Seller shall be to compensate Seller for the reasonable value of the services performed or goods actually delivered as of the date of termination.
- Entire Agreement; Changes:** No change to any of the terms and conditions of this Contract will be effective unless Buyer has agreed to the change in writing. In no event shall Seller commit or incur total expenditures in excess of the amount specified in this Contract without Buyer’s prior written consent. Buyer and Seller agree that if Seller performs additional or changed services without first obtaining Buyer’s prior written consent, Seller shall not be entitled to reimbursement from Buyer. **Regardless of any previous oral or written communication, the written terms of this Contract constitute the entire agreement between Seller and Buyer.**
- Compliance:** Seller represents and warrants that all goods which Seller will deliver and services which Seller will perform under this Contract will be accomplished in compliance with all applicable standards, codes, and specifications; federal, state, and local laws; and rules and regulations. If goods are imported into the United States, Seller will strictly comply with all laws, rules, and regulations relating to the import of such goods.
- Seller’s Indemnity to Buyer:** To the fullest extent permitted by applicable law, Seller agrees that Seller will assume Buyer’s defense and indemnify and hold Buyer harmless for any costs, damages (including damage to property or the environment), injuries (including injury to, illness or death of persons), liabilities, claims, settlements, demands, lawsuits, penalties, interest, taxes or liens which Buyer may incur, be found liable for or are required to pay (collectively called “Claims”) which arise out of or are related to Seller or Seller’s subcontractor’s furnishing goods or providing services to Buyer under this Contract. **THIS PROVISION WILL REQUIRE SELLER TO INDEMNIFY AND DEFEND BUYER FOR CLAIMS CAUSED BY BUYER OR BUYER’S EMPLOYEES’ NEGLIGENCE WHEN SUCH CLAIMS ARISE OUT OF THE JOINT OR CONCURRENT NEGLIGENCE OF (1) SELLER AND SELLER’S EMPLOYEES (INCLUDING SELLER’S SUBCONTRACTORS AND THEIR EMPLOYEES) AND (2) BUYER AND BUYER’S EMPLOYEES. HOWEVER, SELLER WILL NOT BE REQUIRED TO INDEMNIFY BUYER (1) IF THE CLAIM IS THE RESULT OF BUYER OR BUYER’S EMPLOYEES’ SOLE NEGLIGENCE, (2) FOR THE PORTION OF ANY CLAIM WHICH IS CAUSED BY BUYER OR BUYER’S EMPLOYEES’ GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (3) FOR THE PORTION OF ANY CLAIM WHICH IS CAUSED BY A THIRD PARTY OTHER THAN SELLER’S EMPLOYEES OR SELLER’S SUBCONTRACTORS OR THEIR EMPLOYEES.** This indemnity is separate from Seller’s insurance, and Seller will be responsible even if Seller’s insurance carrier denies coverage
- Patents, Trade Secrets, Copyrights and Confidential Information:** Seller agrees to indemnify, hold harmless and defend Buyer in any suit, claim or demand alleging infringement of any patent, copyright, and for misappropriation of any confidential information or trade secrets in the United States, in the country of source, and in the country of destination, based upon the performance of the services, or the sale or use of goods supplied under this Contract. Seller agrees to keep confidential and not to disclose to others or to use in any way to Buyer’s detriment confidential business or technical information that Buyer may have discussed in conjunction with the negotiation or performance of this Contract, or that Seller may be exposed to as a result of entering Buyer’s property to deliver goods or perform services under this Contract. Notwithstanding restrictive legends to the contrary, no confidentiality obligations will be imposed on Buyer by acceptance of materials supplied by Seller.

Title to all plans and specifications and technical data, including but not limited to, drawings, flow diagrams, layout details and specifications, computer programs and their contents furnished to Seller and/or Seller's subcontractors by Buyer or developed by Seller and/or Seller's subcontractors at Buyer's request or direction or as a result of this Contract will belong to and become Buyer's property. All contracts with subcontractors will contain this requirement. Seller will assign and hereby does assign to Buyer all copyrights, trademarks and patents created by Seller during performance of the services. Seller will execute any assignments, applications or other instruments that are necessary to carry out such assignment.

Notwithstanding the foregoing paragraph, Seller agrees that all copyrightable works that Seller creates and has created at Buyer's request and direction or as a result of this Contract (including, but not limited to, documents, computer programs, software, literary works, pictorial works, graphic works, sculptural works, audiovisual works, sound recordings and architectural works) will be and are "works made for hire" under federal copyright law. Seller also assigns to Buyer any rights Seller may have or obtain in all copyrightable works that Seller creates or has created at Buyer's request or direction or as a result of this Contract. Seller will not use any person to create such works for Buyer who does not agree in advance, in writing (i) that the works are to be works made for hire under federal copyright law or (ii) to assign to Buyer all rights the person may have or obtain in the works. Seller will provide Buyer with copies of all such "work for hire" and assignment agreements before any person participates in the creation of any copyrightable work for Buyer.

Invoices and Taxes:

Invoices shall be submitted through the Coupa Supplier Portal (CSP) or e-mailed to Invoices+OTH@odfjell.coupahost.com (Houston terminal) or Invoices+OTC@odfjell.coupahost.com (Charleston terminal) no later than 30 days from the date of shipment or after the work has been completed and no more than 7 days after the issuance date printed on the invoice. The cash discount period shall be computed from the date of receipt thereof by Buyer. The amount of any applicable sales or other tax shall be added to the purchase price of the goods, separately specified by Seller in its invoice, and paid by Buyer. Upon request, Seller shall furnish to Buyer satisfactory documentation showing the applicability of such tax. Buyer holds a Texas Direct Payment Exemption Certificate for its Houston terminal. Payment terms are Net 30 days. ALL INVOICES MUST REFERENCE A PO NUMBER. CHANGE ORDERS MUST HAVE PRIOR APPROVAL AND PO UPDATED AS AUTHORIZATION OF ADDITIONAL FUNDS. INVOICES RECEIVED WITHOUT A PO NUMBER OR NOT IN ACCORDANCE WITH THE INVOICE INSTRUCTIONS ABOVE WILL BE RETURNED TO SELLER.

Seller must send statements of open balances to HoustonAP.Inquiries@odfjell.com (Houston terminal) or OTC.Payables@odfjell.com (Charleston terminal). Statements submitted later than 30 days from the invoice date could result in significant payment delays.

Notwithstanding the provisions in paragraph above, in the event that Buyer submits a Direct Payment Exemption Certificate to Seller, Seller shall not include any sales, use, transfer, or similar taxes imposed by any taxing authorities in the United States in any of its invoices to Buyer. With respect to the taxing jurisdictions where Buyer does not claim exemption from tax, Seller shall include all applicable sales, use, transfer, or similar taxes in all of its invoices to Buyer as a separate charge on each invoice. Buyer's Sales Tax Exemption Certificate, when applicable, may be obtained from Buyer.

Governing Law:

THIS CONTRACT WILL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS. HOWEVER, PRIOR TO AND AFTER FILING ANY LAWSUIT SELLER AND BUYER AGREE TO MAKE A GOOD FAITH EFFORT TO RESOLVE DISPUTES THROUGH SETTLEMENT OR THROUGH USE OF A NEUTRAL THIRD-PARTY MEDIATOR. SELLER AND BUYER AGREE THAT ANY LITIGATION INVOLVING THIS CONTRACT WILL BE BROUGHT IN FEDERAL OR STATE COURTS LOCATED IN HOUSTON, TEXAS AND SELLER AND BUYER WAIVE THE RIGHT TO FILE OR DEFEND AN ACTION ELSEWHERE.

Audit:

Seller agrees to maintain all of Seller's records relating to the quality, price and cost of and payment for the goods sold or the services performed under this Contract and allow Buyer to inspect, copy and audit those records during normal business hours for a period of up to seven (7) years following Seller's delivery of the goods or performance of the services.

Conflict of Interest:

Seller agrees that neither Seller nor any of Seller's employees, subcontractors and their employees, directors or agents will give to or receive from Buyer or Buyer's employees or agents, any gifts or entertainment of significant value or any commission, fee or rebate in connection with this Contract. In addition, neither Seller nor any of Seller's directors or employees will enter into any business arrangement with any of Buyer's employees or agents who are not acting as Buyer's representative, without giving Buyer prior written notification.

Anti-Corruption & EEO:

Seller or Buyer shall not pay or give, offer or promise to pay or give, authorize the payment or giving of any money, fee, commission, remuneration or other thing of value to or for the benefit of any Government Official in order to influence an act or decision of the Government Official in his, her or its official capacity, cause the Government Official to act or fail to act in violation of his or her lawful duty, or cause the Government Official to influence an act or decision of a governmental authority, for the purpose of assisting either Party in obtaining or retaining business or for the purpose of securing an improper advantage, or in violation of applicable law, including without limitation the Foreign Corrupt Practices Act and any other anti-corruption laws, applicable to either Party their directors, officers, employees, consultants or agents. In the event of a violation of this Article, either Party will have the right to terminate the Contract immediately upon written notice and require without prejudice to other remedies which either Party may have under the Contract or applicable law. "Government Official" means an official of government, an official of a government instrumentality, an official of a public international organization, a candidate for political office, an official of a political party and an employee of an

organization which is owned in whole or in part or controlled by a government, government instrumentality or public international organization.

Seller agrees that the following clauses from the Code of Federal Regulations shall apply to this Contract to the extent applicable and are incorporated herein by reference: the Equal Employment Opportunity Clause of Section 202 of Executive Order 11246 (41 CFR 60-1.4(a)), the Equal Employment Opportunity Clause for Workers with Disabilities (41 CFR 741.5(a)), the Equal Opportunity Clause for Disabled Veterans, Recently Separated Veterans, Other Protected Veterans and Armed Forces Service Medal Veterans (41 CFR 60-300.5(a)), and the Notice Clause of Executive Order 13496 regarding Employee Rights under the National Labor Relations Act (NLRA) (29 CFR Part 471, Appendix A to Subpart A). For additional obligations that may apply to purchases of \$50,000 or more, including annual EEO-1 Report and affirmative action plan (AAP) requirements, please see 41 CFR 60-1.7, 60-1.12 and 60-2.1. Seller 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 protected veterans and qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

Insurance:

Seller will maintain, in effect, the following types and amounts of insurance with insurance companies satisfactory to Buyer: (1) Workers' Compensation with Employers' Liability with limits of not less than \$1,000,000 for each accident; (2) Commercial General Liability insurance, including contractual liability insuring the indemnity agreement set forth in this Contract and products-completed operations coverage with limits of not less than \$1,000,000 for property damage, bodily injury, sickness or death, in any one occurrence, (3) Automobile Liability insurance with limits of not less than \$1,000,000 applicable to property damage, bodily injury, sickness or death in any one occurrence; and (4) Umbrella Liability Insurance in the amount of \$5,000,000 covering the risks and in excess of the limits set forth in (1), (2), and (3) above. Prior to commencing services, Seller shall furnish certificates of insurance to Buyer evidencing the insurance required herein. Each certificate shall provide thirty (30) calendar days prior written notice shall be given to Buyer, in the event of cancellation or material change of insurance coverage or endorsements required hereunder. Each certificate shall identify the amount of self-insured retention or deductible for each of the required coverages if the amount of the retention or deductible exceeds 10% of the required limit or \$100,000, whichever is less. In the event of a loss related to the products or services provided under this Contract, if Buyer intends to file a claim as an additional insured under Seller's insurance policy, Seller shall provide copies of the certificate of insurance within thirty (30) calendar days of notification of the loss. All certificates must contain reference to the following endorsements: All policies shall be endorsed to provide that underwriter's and insurance companies of Seller shall not have any right of subrogation against Buyer, its members, subsidiaries, and affiliated companies or against their respective agents, employees, officers, invitees, servants, contractors, subcontractors, underwriters and insurance companies. This requirement is not applicable for Workers' Compensation in monopolistic state fund states. Buyer, its members, partners, subsidiaries, and affiliated companies and their respective employees, officers and agents shall be named as an additional insured in each of Seller's policies except Workers' Compensation and Employer's Liability; however, such extension of coverage shall be limited to this Contract and shall not apply with respect to any obligations, if any, for which Buyer has specifically agreed to indemnify Seller. The insurance shall not affect or limit Seller's liability to Buyer in this contract or under law.

**Waiver of
Mechanic's
Liens:**

Seller agrees that Seller will not file and agree to waive any right Seller may have to file a mechanic's or materialman's lien against Buyer or any of Buyer's facilities (or Buyer's Client's facilities) for any labor or material which Seller has furnished as part of the performance of Seller's obligations under this Contract. In the event any such lien is filed by Seller or one of Seller's subcontractors who has furnished labor or material, Seller will at Seller's own expense take steps to promptly remove the lien by bond or otherwise. Seller further agrees to indemnify and hold Buyer harmless for any loss or damage which Buyer may suffer or incur as a result of Seller's failure to comply with this provision.

Section 2
Terms Applicable to Purchase of Goods

Delivery:

Title and risk of loss will pass from Seller to Buyer in accordance with the applicable INCOTERMS set forth in the Contract (ex. FOB, CIF etc.). Seller warrants that Seller has good and clear title to the goods delivered. If the risk of loss passes to Buyer at the shipping point and if Seller fails to ship in the manner or route directed by Buyer, Seller agrees to reimburse Buyer for any loss, delay or damage which Buyer suffers.

Quality:

Seller warrants that the goods which Seller delivers will be new and of good and merchantable quality and conform to the description stated in this Contract; and that such goods will be fit for the intended use which Buyer has described to Seller. Seller agrees to promptly repair or replace any defective goods that Buyer has notified Seller about within one (1) year following delivery. If Seller fails to promptly repair or replace the defective goods, Seller agrees that Buyer will be entitled to repair or replace them. In such case Seller agrees to reimburse Buyer for Buyer's cost to repair or replace the defective goods. Buyer will be entitled to inspect all goods before, upon or within a reasonable time after delivery. No substitution of any goods will be made without Buyer's written approval. Buyer reserves the right to reject goods which have been reworked.

Price Warranty: Seller warrants that the prices for the goods sold to Buyer under this Contract are not less favorable than those currently extended to any other customer for the same or like goods in equal or less quantities. In the event Seller reduces price for such goods during the term of this Contract, Seller agrees to reduce the prices of the goods accordingly.

Material Identification Requirements: Seller shall label, tag, stamp, or otherwise identify all goods sold to Buyer under this Contract with the following minimum information: Buyer's Purchase Order number; Buyer's Purchase Order line item number; Buyer's SAP Material Master (catalog) number, a short description of the goods and the quantity of the goods. Additionally, Seller shall label, tag, stamp, or otherwise identify each unit of all goods with any additional equipment- or project-specific information specified by Buyer in this Contract. Buyer reserves the right to reject goods not completely identified as specified in this article and to return such goods to Seller at Seller's cost.

Mill Test Reports and Material Safety Data Sheets: Seller will furnish Mill Test Reports ("MTR") and Material Safety Data Sheets ("MSDS"), if applicable, for all material ordered under this Contract. Buyer reserves the right to reject goods without the necessary documentation as specified in this article and to return such goods to Seller at Seller's cost.

Section 3 **Terms Applicable to Performance of Services**

Safety and Security: Seller agrees that Seller will perform the services in a safe and prudent manner in accordance with the most current version of Buyer's "Rules for Contractors" ("Rules") provided by Buyer. Seller will be solely responsible for notifying and training Seller's employees, subcontractors, and agents with respect to the Rules and all applicable laws and regulations. Seller will cause Seller's employees, agents and subcontractors (and their employees) to wear all personal protective equipment required by applicable law, Buyer's area work permits, or the Rules. In the event of a work-related accident, injury or illness to Seller's employees, agents and/or subcontractors in performing the Work, Seller shall immediately notify Buyer's representative of the accident, injury or illness.

If Buyer notifies Seller that Seller is not in compliance with the terms of this provision, Seller will immediately make all reasonable efforts to correct the non-complying condition. If Seller fails to do so, Buyer has the right to require Seller to stop performance of all or any part of the services. Seller will not be entitled to an extension of time to complete performance of the services or to any compensation for additional costs incurred, damages suffered or for the work time lost during the suspension.

Statutory Permits: Seller agrees to obtain and maintain all required federal, state and local permits and licenses required for performance of the services at Seller's sole cost and expense.

Performance: Seller acknowledges that Seller has inspected or have been given the opportunity to inspect the premises upon which Seller will perform the services in order to become familiar with all site conditions. Seller agrees to (1) perform all services in a good, workmanlike, efficient and safe manner; (2) supply all necessary labor, materials, tools and equipment, (3) conform to all required governmental and accepted industry standards of engineering, construction and safety, (4) comply with Buyer's Client's plant rules and (5) perform the services in accordance with the specifications and drawings which Buyer has provided to Seller or which Seller has furnished and Buyer has approved. Seller agrees that Seller will be fully responsible to Buyer for the errors, acts, and omissions of Seller's employees and Seller's subcontractors (and their employees) assisting Seller in performing the services, as if such errors, acts, and omissions were committed by Seller. Buyer may, at any time, and at Seller's sole cost and risk, require Seller to remove any Seller personnel from any Buyer Worksite or from the provision of services, for violation, in the opinion of Buyer, of applicable laws, site rules and regulations or HSSE Standards. In such event, Seller will provide a suitable replacement for any such person within a reasonable time and at no additional cost to Buyer. Seller agrees that all supervisory and craft personnel will have the skills, licenses, and training necessary for performance of the services as required by governmental regulation, industry standards and Buyer's Client's plant rules.

Independent Contractor: Seller will be an independent contractor in all respects with regard to the performance of the services. Seller, Seller's employees or subcontractors performing the services will not be considered for any purpose to be Buyer's employees, agents or representatives. Buyer is interested in the results of the services and will not direct or control the manner or method in which Seller performs the services.

Hazardous Material: Seller acknowledges Seller's understanding that the performance of the services may involve, or may expose persons performing such services to materials, substances, pollutants or contaminants which could be hazardous to human health and/or the environment ("Hazardous Materials"). Seller acknowledges that Seller has considerable experience working in and around refineries and chemical facilities and that Seller is generally aware of the types of materials and substances used or contained in such facilities, including Hazardous Materials, and the risk which they pose to human health or the environment. Buyer has made or will make available to Seller for review MSDS for those substances and materials which Seller's personnel may be exposed to while performing services in Buyer's Client's facility. Seller agrees that Seller will ensure that Seller's employees and Seller's subcontractors familiarize themselves with the information contained in such MSDS.

Warranty: Seller warrants that all services performed will be free from defects in workmanship and will be constructed or erected in accordance with the plans and specifications which Buyer has furnished to Seller or which Seller has furnished and Buyer has approved. While Seller is performing the services and through the one (1) year period following Seller's completion of the services (the "Warranty



Period”), Seller will repair or replace at Seller’s sole cost and expense all defects in material, design or workmanship which Buyer notifies Seller about during the Warranty Period. If Seller fails to correct such defects within a reasonable time, Buyer will have the right to correct them and Seller agrees to reimburse Buyer for Buyer’s out of pocket cost to correct the defects. Seller agrees to pass on all warranties of Seller’s vendors to Buyer, but this will not relieve Seller of any warranty Seller has separately given to Buyer.

**Completion and
Release of
Liens:**

Upon completion of the services and Buyer’s final inspection and approval of the services, Seller will submit Seller’s invoice for final payment for the services and will attach all required guarantees, permits and certificates, plus a Release of Liens certifying that Seller and Seller’s subcontractors have been paid for all labor and materials furnished as part of the services. Buyer will not be obligated to make final payment to Seller for performance of the services until all the above conditions have been met.