

## **TERMS AND CONDITIONS**

**1. Definitions.** “Vendor” shall mean the individual, firm, partnership or corporation to whom this Order is issued. “Buyer” shall mean **Flow Dry Technology, Inc.** and/or its subsidiaries and affiliates by whom this Order is issued. “Goods” and “Services” shall mean, respectively, the Goods to be produced and delivered and the services or work to be furnished or performed by Vendor hereunder. “Order” shall mean the purchase order to which these terms and conditions are attached, and any contract or contracts formed as a result thereof.

**2. Agreement; Modification.** This Order is the complete and exclusive agreement between Buyer and Vendor with respect to the Goods or Services described herein, and no course of dealing or usage of trade, shall explain or supplement any term herein. No modification, rescission or waiver of any term or condition herein shall be made except in a writing signed by Buyer.

**3. Acceptance.** Absent other acceptance by Vendor, shipment of Goods or commencement of Services covered hereby shall constitute acceptance of this Order by Vendor. Any acceptance of this Order is limited to acceptance of the express terms on the front and back hereof. Any proposal for additional or different terms, or any attempt by Vendor to vary the terms of this Order in Vendor’s acceptance, is hereby objected to and rejected, but such proposals shall not operate as a rejection of this Order unless such variances are in the terms of the description, quantity, price or delivery schedule of the Goods, but shall be deemed a material alteration thereof and this offer shall be deemed accepted by Vendor without said additional different terms.

### **4. Prices; Shipping Costs.**

(a) Unless otherwise specified, all prices for Goods are DDP, Buyer’s designated destination, freight prepaid, and all prices for Services are payable on completion. Vendor warrants that the prices named herein are as low as any net prices now given by Vendor to any other customer for the same or similar Goods and Services under similar conditions. If Vendor quotes or sells at lower net prices the same or similar Goods and Services under similar conditions, such lower net prices shall be substituted for the prices named herein. Prices shown on this Order shall be complete and no additional charges of any type shall be added without Buyer’s express written consent, whether for shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating or otherwise.

(b) Unless otherwise expressly agreed, payment terms shall be 2% 10 days, net 60 days computed from the date of delivery and/or accepted performance, or the receipt by Buyer of a correct invoice, whichever is later.

(c) Vendor shall ensure the lowest transportation charges when a specific routing is not shown on this Order. Shipments under \$1,000 are not to be insured at additional cost to Buyer.

(d) If in order to comply with Buyer’s required delivery date, it becomes necessary for Vendor to ship by a more expensive way than specified in this Order, any resulting increase in transportation costs shall be paid by Vendor unless the necessity for rerouting or expedited handling has been caused by Buyer.

(e) Any transportation charges invoiced by a common carrier and added to the invoice must be substantiated by attaching a copy of the freight bill to the invoice on shipments when no freight bill is issued. The weight of the shipment must be included with the type of transportation or name of carrier.

**5. Substitution of Materials.** No change in the Goods or Services ordered under this Order, or their method of production, including substitutions or changes in materials, equipment, processing, or production location, shall be made without the prior written consent of Buyer.

**6. Warranties.** Vendor warrants that all Goods and Services and all components thereof (a) shall be new (not used or reconditioned), (b) shall conform to the drawings, plans, specifications, data and other descriptions furnished or adopted by Buyer, (b) shall be merchantable, free from defects in design, material or workmanship, and fit and sufficient for the purpose or use intended by Buyer, (d) shall conform to any samples provided and any statements made on the containers, labels, web sites, catalogues or other advertisements of Vendor for such Goods

or Services, (e) shall be manufactured or provided in compliance with all applicable laws and regulations, (f) can be lawfully used in the manner intended by Buyer, and (g) shall be adequately contained, packaged, marked and labeled. Vendor agrees that these warranties shall survive inspection and acceptance of the Goods and Services and shall run to Buyer, its successors, assigns and customers and to all users of Buyer's products. The foregoing warranties are not exclusive, but are in addition to all other warranties, express or implied, to which Buyer shall be entitled by law.

**7. Compliance Notice.** Vendor must insert on all INVOICES covering any of the Goods and Services specified herein the following assurance in accordance with the Fair Labor Standards Act:

“We hereby certify that these Goods and Services were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 hereof.”

**8. Inspection.**

(a) Vendor shall test and inspect the Goods and Services before delivery or completion in accordance with applicable laws, industry standards, and any agreed upon protocols, and maintain inspection and test records pertaining to such Goods and Services for a period of two (2) years after delivery of such Goods and Services or as otherwise specified by Buyer and copies thereof shall be made available to Buyer at any time upon request and without charge. Such records shall include the time and the manner in which and the person by whom the Goods or Services have been inspected and tested and the result of such inspections and tests.

(b) Buyer shall have the right to inspect all Goods and Services while in process and on completion or delivery, and to reject any or all Goods and Services which are defective or do not conform to this Order or Vendor's warranties. Goods and Services rejected or Goods supplied in excess of quantities ordered or before requested delivery dates may be returned to Vendor at Vendor's expense. In addition to Buyer's other rights, Buyer may charge Vendor all expenses of unpacking, examining, repacking and reshipping such Goods and having Services re-performed. If defects or nonconformities are not apparent on examination, Buyer reserves the right to revoke acceptance, or require replacement, as well as payment of damages. Nothing in this Order shall excuse Vendor from testing, inspection and quality control. Payment hereunder shall not constitute acceptance.

**9. Remedies.** If Vendor fails to comply with any of the terms and conditions contained in this Order, including late deliveries or performance, provision of Goods or Services which are defective or which do not conform to this Order, or failure to provide Buyer, upon request, with reasonable assurances of future performance, Buyer may terminate this Order for cause. In such event, Buyer shall not be liable to Vendor for any amount (other than as expressly provided herein) and Vendor shall be liable for any and all damages sustained by reason of the event which gave rise to the termination. Buyer shall have, in addition to all rights to cancellation and remedies provided by law (including, without limitation, incidental and consequential damages) the following rights:

(a) To cancel all or any part of this Order and to return to Vendor any non-conforming Goods or parts thereof without right in Vendor to cure such failure, and Vendor shall pay all transportation charges for the delivery to Buyer and the return to Vendor; or

(b) To require the replacement or correction at Vendor's expense of any non-conforming Goods and Services, including all transportation charges; or

(c) To accept the non-conforming Goods or Services and correct them at Vendor's expense or use the Goods in their existing condition and an equitable reduction in the purchase price, which if already paid, shall be refunded by Vendor forthwith.

Upon termination, Buyer's only responsibility to Vendor shall to pay the contract price for: (a) conforming Goods delivered in accordance with this Order; and (b) Services performed in accordance with the terms of this Order and accepted before the date of receipt by Vendor of the termination notice.

**10. General Indemnities.** Vendor shall indemnify, defend and hold the Buyer, its successors, assigns, shareholders, officers, directors, employees, agents, customers and those selling or using its products, and any affiliated company of Buyer, and its officers, directors, shareholders, employees, customers, agents and the users of its products ("Indemnitees") harmless from any liability on any claims made upon or brought against any Indemnitee by any person whomsoever which are in any way related or connected with the Goods and Services or the manufacture, sale, distribution, transport, use or disposal of the same, or the presence of any Vendor personnel or subcontractor on Buyer's premises, including without limitation, personal injury, death and property damage. Buyer may, at its option, be represented by and actively participate through its own counsel in any suite or action against the foregoing persons and entities.

**11. Recalls.** If any ingredient in the Goods is or may become harmful to persons or property, or their design or manufacture may become harmful to persons or property, or Vendor otherwise breaches any of its warranties to Buyer hereunder, Vendor shall immediately give notice thereof, including all relevant information with respect thereto to Buyer. Vendor shall indemnify, defend and hold the Indemnitees, harmless from and against any and all costs associated with recalling the Goods. Should Buyer, either voluntarily or involuntarily, initiate a recall of such products, or if a government or agency shall take action with respect to them, Vendor shall assist and cooperate with Buyer, at Vendor's expense, in all respects with said recall, including, but not limited to, developing a recall strategy for the products and working with Buyer and any applicable governmental agency in monitoring Buyer's recall operations and in preparing and furnishing such reports, records or other such information as is necessary in connection therewith, and Vendor agrees to pay all costs associated with such recall.

**12. Infringement.** Vendor warrants that the Goods and Services, unless made to Buyer's detailed proprietary designs, and the sale or use of them, shall not infringe or contribute to the infringement of any United States or foreign patent, trademark, or copyright. Vendor shall defend, indemnify, and hold the Indemnitees, against all claims, demands, suits damages, royalties, profits, costs, expenses, claims and demands, and for any and all attorneys' fees incurred by Buyer or for which Buyer is held liable, arising from actual or alleged infringement or contributory infringement of any patent, trademark or copyright as well as for any alleged unfair competition, arising by Buyer's purchase, use or resale of the Goods or Services.

**13. Proprietary Information; Confidentiality; Advertising.** Vendor shall consider all information furnished by Buyer to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this Order, unless Vendor obtains written permission from Buyer to do so. This paragraph shall apply without limitation to drawings, specifications, or other documents prepared by Vendor for Buyer in connection with this Order, application data, actual or potential customers and strategic planning data. Vendor shall not advertise or publish the fact that Buyer has contracted to purchase Goods from Vendor nor shall any information relating to this Order be disclosed without Buyer's written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Vendor to Buyer shall be deemed secret or confidential and Vendor shall have no rights against Buyer with respect thereto except such rights as may exist under patent laws.

**14. Force Majeure.** Without liability, Buyer may delay delivery or performance occasioned by causes beyond its control. Vendor shall hold such Goods at the direction of Buyer and shall deliver them when the cause affecting the delay has been removed. Causes beyond Buyer's control shall include acts of God, war, terrorism, government action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather. Vendor waives any right to void or reduce its commitment under this Order by the allocation of production and delivery among its customers as set forth in Section 2-615 of the Uniform Commercial Code.

**15. Termination For Convenience Of Buyer.** Buyer reserves the right to terminate this Order or any part hereof at any time for its sole convenience. Vendor shall not charge any cancellation or restocking fee without Buyer's consent.

**16. Changes.** Buyer may at any time make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation and if any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this Order shall be modified in writing accordingly. Vendor agrees to accept any such reasonable changes subject to this paragraph.

**17. Insurance.** Vendor shall carry appropriate insurance with reputable carriers given the nature and scope of Vendor's business and of the Goods and Services, and furnish Buyer with a standard certificate evidencing such coverage and naming Buyer as an additional insured on Vendor's liability policies. Said certificate must provide that Buyer shall be given at least sixty (60) days' written notice prior to an expiration, termination, non-renewal or material change in coverage.

**18. Set-Off.** Buyer may set off against any amounts payable by Buyer to Vendor under this Order or otherwise, any amount which Vendor may owe to Buyer, under this Order or otherwise.

**19. Time is of the Essence.** Time is of the essence of this Order and, if delivery of items or rendering of Services is not completed by the time promised, Buyer reserves the right without liability in addition to its other rights and remedies to terminate this Order by notice effective when received by Vendor as to items not yet shipped or Services not yet rendered and to purchase substitute items or Services elsewhere and charge Vendor with any loss incurred.

**20. Tooling.** All tooling acquired by Vendor to produce the Goods or Services shall be the property of Buyer and shall be returned upon request without regard to outstanding invoices scheduled to be paid within terms.

**21. Work on Buyer's Premises.** If this Order pertains to Services to be performed by Vendor on Buyer's premises, Vendor agrees to furnish all materials and labor called for under this Order on the following terms, in addition to the other terms and conditions herein:

(a) Vendor shall perform the Services in a prompt, efficient and workmanlike manner so as to promote the general progress of the entire construction, and shall not, by delay or otherwise, interfere with or hinder the work of Buyer or any other contractor. Vendor agrees to reimburse Buyer for any and all liquidated and actual damages that may be assessed by any contractor against and collected from Buyer which are attributable to Vendor's failure to perform within the time fixed or in the manner provided for herein. Reimbursement shall not release Vendor from obligations to perform.

(b) No extension of time shall be claimed by Vendor unless Vendor shall made a written request of Buyer for such extension, within forty-eight hours after the cause for such extension arose, and unless Buyer and Vendor have agreed in writing upon the extension.

(c) No extension of time shall be given to Vendor for delay by Vendor in preparing its drawings, or in securing approval of Buyer thereto when such drawings are not properly prepared for approval of Buyer, or when Vendor by the exercise of reasonable diligence or good business judgment could have anticipated and avoided the delay.

(d) If Vendor fails to comply with the provisions herein and the failure is not corrected within five (5) days after written request by Buyer to Vendor, Buyer may, without prejudice to any other right or remedy, furnish or secure elsewhere the necessary material to remedy the situation at the expense of Vendor including attorney's fees.

(e) Vendor shall require its agents or subcontractors, if any, who may enter upon Buyer's premises to maintain similar insurance and to agree to furnish Buyer, if requested, certificates or adequate proof of such insurance.

**22. Assignments; Subcontracting.** No part of this Order may be assigned or subcontracted by Vendor without the prior written approval of Buyer.

**23. Waiver.** The failure of Buyer to insist in any one or more instances upon the performance of any term, covenant or condition of this Order, or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of any other term, covenant or condition of this Order nor of the future performance of any term, covenant or condition, or the future exercise of any right with respect thereto.

**24. Limitation of Liability; Statute of Limitations.** In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with, or resulting from, this Order or from the performance of breach thereof shall in no case exceed the price allocable to the Goods or Services or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the Goods or Services delivered hereunder must be commenced within one year after the cause of action has occurred.

**25. Governing Law; Disputes.**

(a) All controversies concerning the meaning of this Order or the rights of the parties hereunder shall be construed and resolved under the laws of the State of Ohio; excluding, however, rules relating to conflicts of law. The Convention on the International Sale of Goods shall not apply to this Order or any Goods and Services.

(b) Vendor consents exclusively to the adjudication of any dispute arising out of this Order in any federal or state court of competent jurisdiction sitting in Montgomery County Ohio. Where Vendor is not domiciled within the United States or Canada, the controversy shall at Buyer's demand be finally resolved by arbitration in Chicago, Illinois, under the Commercial Arbitration Rules of the International Chamber of Commerce. The tribunal is to consist of one (1) arbitrator. The arbitrator(s) shall permit the discovery by the parties and compel the attendance of witnesses by subpoena. The arbitration shall be conducted in English and any award of such arbitration proceeding may be enforced in any court having jurisdiction. All legal fees and expenses of suit or arbitration incurred by the parties in any such suit or proceeding shall be borne by the non-prevailing party.

**26. Capacity of the Parties.** Vendor and Buyer are independent contractors and any persons providing Goods or Services on Vendor's behalf shall not be considered employees of Buyer. Vendor shall indemnify and defend the Indemnitees from any and all claims or liabilities arising out of any claim to the contrary.

**27. Conflicts of Interest.** Vendor represents that no officer or employee of Buyer or any of its affiliates has been employed, retained, induced or directed by Vendor to solicit or secure this Order with Buyer upon agreement, offer, understanding, or implication involving any form of remuneration whatsoever. Upon any allegation of substance (the determination of which shall be solely made by Buyer), that there has been a violation hereof, Vendor shall cooperate in every reasonable manner with Buyer in establishing whether the allegation is true. Notwithstanding any provision of this Order to the contrary, if a violation of this provision is found to have occurred and is deemed material by Buyer, Buyer may cancel this Order.

**28. Compliance with Laws; Equal Opportunity.**

(a) Vendor shall comply with all applicable Federal, state and local laws, rules and regulations relating to the Goods and Services hereunder, including, but not limited to, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Fair Packaging and Labeling Act, the Federal Hazardous Substances Act, the Federal Toxic Substances Control Act, the Fair Labor Standards Act of 1938, and the Occupational Safety and Health Act of 1970, all as amended from time to time, and Vendor shall furnish certificates of compliance whenever requested by Buyer.

(b) Buyer may serve from time to time as a contractor or subcontractor for the United States Government. Accordingly, Vendor shall comply with all applicable Federal laws, rules and regulations applicable to subcontractors of government contractors including Section 202 of Executive Order 11246, as amended by Executive Order 11375, the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Rehabilitation Act of 1973, as amended, and those governing contracts with business concerns operating in areas of surplus labor (48 C.F.R. Part 20), with women owned business concerns (Executive Order 12138) and with small and disadvantaged business concerns (15 U.S.C. 637), all as amended from time to time, and shall furnish certificates of compliance whenever requested by Buyer. Contract clauses require by the Government in such circumstances, and all rules and regulations promulgated under the specific acts cited, are incorporated into this Order by reference.

**29. Order of Precedence.** In the event of any inconsistency between these terms and conditions and the terms typed on the face of this Order or any supplemental items attached hereto by Buyer, typed items on the face hereof or such supplemental items shall prevail and, if there is any inconsistency between typed items and attachments, the typed items shall prevail.