



PENN UNITED TECHNOLOGIES, INC.

TERMS AND CONDITIONS OF PURCHASE (PUT 2008-11)

1. **DEFINITIONS.** As used in these Terms and Conditions of Purchase ("Terms and Conditions"), Penn United Technologies, Inc. shall be referred to as "Penn United," the company supplying goods or services under this purchase order (the "Purchase Order") shall be referred to as "Vendor," and the term "goods" means the goods, pieces, merchandise, materials, equipment, supplies, and products or services ordered.

2. **OFFER TO PURCHASE.** This Purchase Order, provided that it is not a blanket order that provides merely an estimate of amounts to be purchased within a defined time period, is an offer to purchase the goods. To the extent this Purchase Order is in any way deemed to be an acceptance of a quotation or other offer by Vendor, any such acceptance is expressly conditioned upon the consent of Vendor to the Terms and Conditions.

3. **ACCEPTANCE.** Any of the following acts by Vendor shall constitute acceptance of this Purchase Order: signing and returning a copy of this Purchase Order; commencement of performance or informing Penn United in any manner of commencement of performance; or returning Vendor's form of acknowledgement. Acceptance of this Purchase Order constitutes agreement by Vendor to these Terms and Conditions and agreement by Vendor to deliver as specified under the Terms and Conditions. Notwithstanding provisions of section 2-207 of the Pennsylvania UCC, no term or condition included in any writing of acceptance by Vendor shall be deemed to be part of the agreement between the parties unless Vendor has requested and received written assent thereto by an authorized representative of Penn United. Any acceptance of this Purchase Order is limited to acceptance of the express terms of the offer contained herein. Any proposal for additional or different terms or any attempt by Vendor to vary in any degree any of the terms of this offer in Vendor's acceptance is hereby objected to and rejected, but such proposal shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods but shall be deemed a material alternation thereof, and this offer shall be deemed accepted by the Vendor without such additional or different terms.

4. **VARIATION OR MODIFICATION.** Additional or different terms, or any attempt by Vendor to vary in any degree any of the terms of this Purchase Order, shall be deemed material and shall be rejected. No variations or modifications in the provisions of this Purchase Order including, without limitation, the description, quantity, price or delivery schedule will be effective against Penn United unless agreed to in writing and signed by Penn United's authorized representative.

5. **LOWER PRICE.** Should Vendor during the term of this Purchase Order reduce its selling, list or market price for goods of equal quality and quantity, Penn United shall receive the benefit of the lower price on all goods shipped while the lower price is in effect.

6. **DELIVERY.** The delivery and performance requirements and specified dates of this Purchase Order shall be strictly adhered to and shall not be changed or modified without Penn United's prior written consent. In the event of failure to deliver or perform by the dates specified in a Purchase Order, Penn United reserves the right to cancel such Purchase Order in total or any unexecuted part of such Purchase Order. If no delivery date is shown, delivery shall be made within a reasonable time. Penn United's count shall be accepted as conclusive on all shipments not accompanied by a packing slip.

7. **PACKAGING.** Goods shall be packed to meet carrier requirements and to ensure the lowest transportation rates consistent with adequate protection. Any extra expenses affecting delivery of goods not so shipped will be charged to Vendor. Penn United shall not be liable for any packaging charges, unless otherwise agreed to in advance in writing. All goods, wrappers, and containers must bear markings and labels required by applicable federal, state, and municipal laws and regulations.

8. **SHIPPING DOCUMENTS AND CONTAINERS.** The shipping destination for goods must appear on all shipping containers and on all documents, invoices, and correspondence. Vendor shall forward to Penn United with the invoice the express receipt or bill of lading signed by the carrier, evidencing the fact that shipment has been made. All expenses incurred by Vendor's failure to furnish necessary shipping documents shall be charged to Vendor.

9. **FOB; DAMAGE DURING DELIVERY.** Delivery of goods under this Purchase Order shall be by FOB: Penn United, Cabot, Pennsylvania, and unless other agreed and/or stated in this Purchase Order, the risk of loss or damage shall remain with the Vendor until actual delivery to Penn United. Vendor shall be responsible for damages sustained during delivery. Any resulting claims against carriers shall be the responsibility of the Vendor. Replacement of any damaged goods shall be the sole responsibility of Vendor.

10. **PAYMENT AND TERMS.** Unless otherwise stated in this Purchase Order, terms of payment shall be 2% 15 days, 60 days net, or as negotiated by Penn United and Vendor. Payment and cash discount periods shall start with the date of receipt of proper invoice or date of delivery, whichever is later. Penn United shall not, by making prompt payment or payment prior to inspection, be deemed to have accepted any goods or to have waived any claim for adjustment or any other claim against Vendor.

11. **INSPECTION.** Goods shall be subject to inspection, test, and count by Penn United after receipt at destination. If any goods shall be defective in material or workmanship or otherwise not in conformity with the requirements of this Purchase Order, Penn United, in addition to its other rights, may reject same for full credit or require prompt correction or replacement at Vendor's expense, including replacement costs for any raw material or semi-finished products or components supplied, labor and transportation. Goods which are defective or of an unauthorized quantity or not in accordance with specifications will be held for 30 days from and after date of discovery of defect by Penn United for Vendor's instruction at Vendor's risk; and if Vendor so directs or if no instructions are sent within 30 days, goods will be returned at Vendor's expense. If inspection discloses that part of the goods received are not in accordance with Penn United's specifications, Penn United shall have the right to cancel any unshipped portion of its order.

12. **QUANTITY.** Shipments must equal exact amounts ordered unless otherwise agreed to by Penn United.

13. **TIME IS OF THE ESSENCE.** Time of delivery and of all other aspects of performance hereunder is of the essence of this Purchase Order. If any goods are not received, or any element of service not performed by the date specified, Penn United may, at its option and without notice to Vendor, either approve a revised date or cancel all or a portion of the Purchase Order and obtain the goods elsewhere. In either event, Vendor shall be liable to Penn United for any resulting loss incurred by Penn United.

14. **CHANGES BY PENN UNITED.** Penn United shall have the right, by giving notice to Vendor, to make changes in the drawings, designs, specifications for the goods, or the method of shipment or packing or the place of inspection, delivery, or acceptance. Upon receipt of any such notice, Vendor shall proceed promptly to make such changes in accordance with the terms of such notice. Vendor shall deliver to Penn United, within 15 days, a statement showing the effect of any such change in the cost of, or the time required for, performance of this Purchase Order, and an equitable adjustment shall be made in the price or delivery schedule or both.

15. **CANCELLATION AND RESCHEDULING.** Penn United may cancel this Purchase Order in whole or in part without charge prior to shipment of

the goods or commencement of performance of the services by written notice to Vendor. Equitable payments/adjustments may be made for work performed prior to cancellation. Penn United may reschedule the time and place of delivery of goods under this Purchase Order in whole or in part without charge prior to shipment of the goods or commencement of services by written notice to Vendor. Cancellation or rescheduling under this Section shall not be deemed to be a breach of contract.

16. DISCREPANCIES. In case of any discrepancies or questions, Vendor shall refer to Penn United for decision, instruction or interpretation.

17. CONFIDENTIAL INFORMATION. All drawings, data, designs, specifications, tools, materials, and other property furnished by Penn United shall be confidential, shall remain Penn United's property, shall be used by Vendor only in the performance of this Purchase Order, and together with all copies thereof, shall be redelivered to Penn United or destroyed by Vendor as Penn United specifies. Vendor assumes all risks of loss or damage to any such drawings, specifications, tools, materials, or other property, and shall redeliver the same to Penn United (when specified by Penn United) in the same condition as when received by Vendor except for reasonable wear and tear of utilization in the performance of this Purchase Order. This Purchase Order is confidential between Penn United and Vendor, and it is agreed by Vendor that none of the details connected herewith shall be published or disclosed to any third party without Penn United's written permission.

18. WARRANTIES. Vendor expressly warrants that all goods will conform to any applicable specifications, drawings, samples, or other descriptions and will be merchantable, of good workmanship and material, fit for the purpose for which intended, and free from defect. Such warranties shall survive inspection, test, acceptance, and payment. Acceptance of this Purchase Order shall constitute an agreement upon Vendor's part to indemnify and hold Penn United harmless from all liability, loss, damage, and expense including reasonable attorneys' fees incurred or sustained by Penn United by reason of the failure of the goods to conform to such warranties. Such indemnity shall be in addition to any other remedies provided by law.

19. INDEMNIFICATION.

19.1 If any work or services are to be performed on any premise of Penn United pursuant to this Purchase Order, Vendor shall indemnify Penn United and hold Penn United harmless against and from any and all losses, liabilities, and claims, including costs and expenses for property loss or damage or bodily injury or death resulting directly or indirectly from the performance of such work or services. Vendor shall give Penn United a policy or certificate of public liability insurance, with such insurance carrier and with such limits as Penn United may reasonably require, insuring Penn United, primary to any other insurance available to Penn United, against any and all such losses, liabilities, and claims.

19.2 If Vendor is furnishing any goods, or products which become a part of any goods or product of Penn United or others, then Vendor will further indemnify and save harmless Penn United, its employees, agents, and representatives from and against any and all demands of every nature and kind including without limitation reasonable attorneys' fees, and disbursements incurred in defense of any claim or demand arising out of injury to or death of or property damage to any third person if said injury, death, and/or property damage is in any way caused from any act or omission on the part of Vendor, its agents, employees, or subcontractors except to the extent that any loss or damage is due solely and directly to the gross negligence of Penn United. This indemnification includes but is in no way limited to any defect in goods, materials, products, or services in either manufacture or design.

19.3 Vendor agrees to indemnify and hold Penn United harmless against any and all losses, liabilities and claims that may be brought or assessed by any party whatsoever against Penn United as a result of Vendor's failure to complete its performance of this Purchase Order in full on or before the delivery date set forth in this Purchasing Order.

20. INTELLECTUAL PROPERTY INFRINGEMENT. With respect to the goods provided under this Purchase Order, Vendor shall defend, indemnify and hold harmless Penn United, its directors, officers, employees, agents and affiliates for and against any and all liabilities, claims, damages, expenses

and costs (including reasonable legal fees and expenses) arising from or related in any way to a violation or infringement of any patent, copyright, trademark, trade dress, and trade secret, or any other contractual right, proprietary right or intellectual property right, of any third party.

21. DEFAULT. Penn United may, by written notice to the Vendor, terminate the whole or any part of this Purchase Order if (i) Vendor fails to make delivery of any goods within the time specified, or (ii) Vendor delivers any goods that do not conform to contractual requirements, or (iii) Vendor fails to perform any other provision of this Purchase Order, or (iv) so fails to make progress as to endanger performance of this Purchase Order in accordance with its terms, or (v) Vendor becomes insolvent or subject to proceedings under any law relating to bankruptcy or the relief of debtors. Penn United may, in addition to its other rights, procure upon such terms and in such manner as Penn United may deem appropriate substitute goods or services similar to the goods so terminated; and Vendor shall be liable to Penn United for any excess costs of such similar goods or services, except that Vendor shall not be liable for such excess costs if Vendor's default is due to a cause beyond its control and without its fault or negligence including Acts of God, force majeure, war, flood, fire, act of any government, or catastrophe. Acceptance of any part of the goods covered by this Purchase Order does not bind Penn United to accept future shipments nor deprive it of the right to return goods already accepted.

22. SET-OFFS. All claims for money due or to become due from Penn United shall be subject to deductions by Penn United for any set-off or counterclaim arising out of this or any other of Penn United's purchase orders or agreements with Vendor, whether such set-off or counterclaim arose before or after any assignment by Vendor.

23. TAXES. The prices for the goods include all federal, state, and local taxes imposed on the goods or the sale thereof; but no such tax shall be included for which an exemption is available. Vendor shall separately state on each invoice the amount of any such tax and shall indemnify Penn United against liability for any tax not so stated. In the event that it shall be determined that any tax included in any price was not required to be paid, Vendor will notify Penn United, will make prompt application for the refund thereof, and will make prompt payment to Penn United of the amount of any refund.

24. ASSIGNMENT. No obligation under this Purchase Order shall be delegated or assigned by Vendor without the prior written consent of Penn United, and any purported subcontracting, delegation or assignment without such consent shall be void. In case of any assignment by Vendor of the right to receive monies due or to become due hereunder, Penn United will, at its option, make no further payments until furnished reasonable proof that the assignment has been made; and Penn United may assert against the assignee any defense or claim that it is entitled to assert by law.

25. ENTIRE AGREEMENT. This Purchase Order, including the Terms and Conditions, and any document referred to herein constitute the entire contract between the parties relating to the subject matter hereof and supersede all prior understandings, transactions, communications, or writings in respect of such subject matter. It may not be modified or terminated orally; and no claimed modification, termination, or waiver shall be binding unless in writing and signed by the party against whom such claimed change, termination, or waiver is sought to be enforced.

26. GOVERNING LAW, VENUE, WAIVER OF JURY TRIAL. The substantive and procedural laws of the Commonwealth of Pennsylvania shall apply in all respects to the interpretation and enforcement of this Purchase Order without reference to choice of law principles. Vendor irrevocably consents to the jurisdiction of the courts of the Commonwealth of Pennsylvania, with venue in Butler County or, in the alternative, to the extent that a basis for federal jurisdiction exists, in the United States District Court for the Western District of Pennsylvania. Vendor waives its objections to such forums, whether on the basis of inconvenience, law of personal jurisdiction or otherwise. PENN UNITED AND VENDOR EACH WAIVES ALL RIGHTS TO TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE THAT ARISES OUT OF OR RELATES IN ANY WAY TO THIS PURCHASE ORDER.