

# Intercell USA, Inc.

## Terms and Conditions

This attachment provides the terms and conditions by which Supplier agrees to sell and deliver and Purchaser (Intercell USA, Inc.) agrees to purchase and receive the Goods and/or Services specified on the face of the Purchase Order, subject to the terms of this Agreement.

If Purchaser issues a firm offer to purchase from Supplier pursuant to Purchase Order, then, in the event of a counteroffer by Supplier, Supplier acknowledges and agrees that a contract does not exist between the parties on the terms proffered by Supplier unless and until Purchaser accepts such counteroffer in writing. Any performance by Supplier prior to written acceptance of the terms of the counteroffer by Purchaser shall be under the terms originally issued by Purchaser and at the sole risk of Supplier.

Except as otherwise stated in this Agreement, Supplier shall submit invoices upon Supplier's Delivery of all Goods and/or completion of all Services. Each such invoice shall be submitted by Supplier to the location shown in the purchase order, and shall include: (i) this Agreement number, (ii) an itemization of the specific Goods and/or Services provided by Supplier; (iii) the applicable date of Delivery for all such Goods and/or Services; (iv) an itemization of the respective unit prices, if applicable, for which payment or partial payment is invoiced; (v) the total invoice amount; and (vi) the Purchaser's location to which the goods and/or services have been delivered. If Supplier is providing Goods or Services to Purchaser under more than one agreement, each such agreement shall be invoiced separately.

Except as otherwise stated in this Agreement, Purchaser shall use commercially reasonable efforts to make payment for all Goods and Services provided by Supplier within thirty (30) days following the later of: (i) the date of Delivery; or (ii) the date of Purchaser's actual receipt from Supplier, at the location designated above, of an invoice conforming to the requirements set forth at Section 4(A) of this Agreement and accurately reflecting the terms and conditions of the Purchase Order to which it relates.

Notwithstanding anything herein to the contrary, Purchaser may withhold from payments due or to become due to Supplier: (i) ten percent (10%) of all invoiced amounts pending receipt of any documentation that may be specified in this Agreement, and (ii) an amount sufficient to protect Purchaser completely from any and all breaches, claims, liens, losses, damages or expenses actually incurred or reasonably anticipated to be incurred by Purchaser in connection with any agreement by and between Purchaser and Supplier, including without limitation this Agreement, until the breach, loss, damage or expense has been cured or same has been satisfied, terminated or released to Purchaser's satisfaction.

Notwithstanding anything herein to the contrary, Purchaser shall have the additional right to setoff against payments made to Supplier hereunder for amounts owed by Supplier to Purchaser, whether or not pursuant to this Agreement.

Supplier warrants and represents to Purchaser that each item of Goods provided pursuant to this Agreement shall: (i) strictly conform to the requirements of this Agreement, (ii) be free from defects in workmanship, materials and design, (iii) be merchantable, (iv) be fit for its intended use, and (v) be new. Unless otherwise stated in the Purchase Order, no surplus, rebuilt, reconditioned, or used Goods shall be provided.

This warranty establishes the standard for the quality of the Goods by stipulating that the

Goods conform to the Agreement, be defect free, be sellable, be useable for what they are intended and be new. The last sentence reinforces the requirement that the Goods be new.

Supplier warrants and represents to Purchaser that it owns all right, title and interest in and to the Goods, or if not the owner, Supplier has full authority to sell the Goods to Purchaser on behalf of owner. Supplier further warrants and represents to Purchaser that the Goods are free from any and all security interests, claims, demands, liens, or other encumbrances.

In the event any item of Goods fails to conform to this warranty of title, Supplier shall defend the title thereto and shall, at Purchaser's option and at no cost to Purchaser, promptly remove, or cause to be removed, any such security interest, claim, demand, lien or other encumbrance, or shall replace the item with a similar item conforming to this warranty of title.

THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED.

THE REMEDIES SET FORTH IN THIS ARTICLE ARE IN ADDITION TO, AND NOT IN LIEU OF, SUCH OTHER REMEDIES AS MAY BE AVAILABLE TO PURCHASER AT LAW OR IN EQUITY.

SUPPLIER SHALL NOT BE EXCUSED FROM ITS OBLIGATIONS UNDER THIS ARTICLE BY PURCHASER'S FAILURE TO INSPECT, FAILURE TO DISCOVER DEFECTIVE WORK, APPROVAL OF OR PAYMENT FOR THE WORK OR ANY PORTION THEREOF.

In addition to and not in lieu of the remedies provided to Purchaser in the Article entitled

Indemnity, Supplier shall, at its own expense: (i) defend any suit or proceeding brought against Purchaser based on an allegation that all or any portion of the Goods or Services

supplied hereunder, or use thereof for its intended purpose, constitutes an infringement of any claim of any patent, copyright, trademark or trade secret, provided Purchaser notifies Supplier in writing, (ii) pay all damages and costs, including reasonable attorneys' fees through final appeal, awarded in any suit or proceeding, or agreed by the parties in settlement, (iii) indemnify Purchaser against any and all costs and expenses incurred by Purchaser, including the above and those for providing information and assistance to Supplier for the defense of said suit or proceeding or the settlement of such claims, and (iv) at Purchaser's option and at no cost to Purchaser, procure for the Purchaser the right to continue using the Goods and Services, or portion thereof, replace all that infringes with substantially equivalent noninfringing replacements, or modify same to be noninfringing, if there is infringement or contributory infringement of a third party by Purchaser's use of the Goods and Services acquired from Supplier hereunder, and its use by Purchaser is enjoined, or pro-rate and refund the Compensation paid hereunder attributable to the Good or Service in question.

These provisions shall not apply to the extent that the Goods or Services were supplied in accordance with Purchaser's design or instructions where compliance therewith has caused Supplier to deviate from its normal course of performance, were modified by Purchaser or were combined by Purchaser with items not furnished hereunder, and a suit or proceeding is brought against Purchaser solely by reason of said design, instruction, modification or combination.

Purchaser and Supplier may have a proprietary interest in certain Confidential Information furnished to each other pursuant to this Agreement. Purchaser and Supplier shall keep in confidence and shall not disclose, without the prior written consent of the disclosing party, any such Confidential Information, provided it is disclosed in writing and marked as Confidential Information of disclosure at the time of disclosure.

Notwithstanding the foregoing, Purchaser may disclose such Confidential Information to its suppliers or contractors for the purpose of securing services, securing goods or seeking bids for such services and/or goods in connection with the operation, modification or maintenance of Purchaser's facilities, provided Purchaser requires such suppliers and contractors to return or destroy all written materials containing Confidential Information and to agree not to make any further disclosure of same or to use it for any purpose other than that for which it was disclosed by Purchaser.

The provisions of this Article shall not apply to Confidential Information which: (i) is or becomes generally known or available to the public without breach of this Agreement, (ii) is received from a third person without

limitation or restriction at the time of disclosure, or (iii) was known to recipient, as can be documented by recipient's written records, prior to receiving the disclosure by the disclosing party.

Notwithstanding these restrictions, Purchaser or Supplier may disclose such Confidential Information where required by any court, government agency or proper discovery request or to the extent necessary to secure governmental authorization.

Prior to making any such disclosure, the recipient of Confidential Information shall, to the extent practicable: (i) provide the discloser with timely advance notice of its intent to comply with the disclosure requirement in order to allow the discloser to make objection to the disclosure requirement, (ii) minimize the amount of Confidential Information to be disclosed consistent with the interests of the discloser and the requirements of the court, government agency or discovery request involved, and (iii) make reasonable efforts to secure confidential treatment of the Confidential Information to be provided or to seek revision of the information request to minimize the amount of Confidential Information to be supplied.

Upon request of Purchaser, and in any event upon termination of this Agreement, Supplier shall, at the sole option of Purchaser, either return all of Purchaser's Confidential Information including all originals, copies and records thereof, or furnish to Purchaser an officer's certificate of destruction of the Purchaser's Confidential Information.

Purchaser shall have the right to reproduce in any format any and all physical documentation supplied under the terms of this Agreement, provided, however, that such reproduction shall be for the sole use of the Purchaser and shall be subject to the same restrictions on use and disclosure as are contained herein.

Unless otherwise specified, title and risk of loss for each item of Goods shall pass to Purchaser upon Delivery.

This Agreement shall be governed by the laws of Maryland without giving effect to the choice of laws principles thereof, and is deemed to have been executed, entered into and performed within Gaithersburg, Maryland. The parties hereby irrevocably submit to jurisdiction in Maryland, and venue shall lie in the [SPECIFIC COURTS]. The parties hereby waive any objection to such jurisdiction and venue.

The failure of Purchaser to demand strict performance of the terms of, or to exercise any right conferred in, this Agreement shall not be construed as a waiver or relinquishment of its right to assert or rely upon any such term or right in the future, or consent to any continuing or subsequent failure or breach.

In the event any provision, or any part or portion of any provision of this Agreement shall become or be declared unlawful, invalid, void or otherwise unenforceable, the rights and obligations of the parties shall be reduced only as much as is required to remove the unenforceability. The balance of this Agreement shall remain of full force and effect.

No information relative to this Agreement or the Work shall be released by Supplier for publication, advertising or for any other purpose without the prior written approval of Purchaser.

This Agreement shall be binding on the parties hereto and their directors, officers, employees, agents, successors and assigns.

This Agreement, together with all attachments and incorporated references, is the entire agreement between Purchaser and Supplier with respect to the Work and supersedes any prior or contemporaneous agreement or understanding between the parties regarding the subject matter hereof. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth or provided for herein. No prior course of dealing, usage of trade or course of performance shall be used to supplement or explain any term, condition or instruction used in this Agreement, nor shall same be deemed to effect any amendment hereto.