

**ALL BLANKS MUST BE FILLED IN. PLEASE WRITE N/A WHERE NOT APPLICABLE. ALL INFORMATION IS KEPT CONFIDENTIAL.**

Date: \_\_\_\_\_

Legal Name of Firm: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City/State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax \_\_\_\_\_  
Trade Name: (dba) \_\_\_\_\_ Web Site Address: \_\_\_\_\_  
Accounts Payable Contact: \_\_\_\_\_ Accounts Payable e-mail \_\_\_\_\_  
Business Organization: Individual Partnership Corporation:  
Type of business: \_\_\_\_\_ DUNS number: \_\_\_\_\_  
Federal ID: \_\_\_\_\_ Business established (year) \_\_\_\_\_

**Co qwpvqhEtf k/Tgs wguipi :**

**TAX EXEMPT:** YES NO **Exemption/Resale Certificates held for any state where products are shipped must be submitted with this application or sales tax will be charged where applicable.**

Div/Subsidiary of: \_\_\_\_\_

**BILL TO ADDRESS** \_\_\_\_\_

**SHIP TO ADDRESS** \_\_\_\_\_

If incorporated, list officers of corporation. If not, list owners:

Name: \_\_\_\_\_ Title: \_\_\_\_\_ S/S#: \_\_\_\_\_

Home address: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_ S/S#: \_\_\_\_\_

Home address: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_ S/S#: \_\_\_\_\_

Home address: \_\_\_\_\_

**BANK REFERENCES (Must Include Fax Number)**

Bank \_\_\_\_\_ Street Address \_\_\_\_\_

City, state, zip \_\_\_\_\_ Phone \_\_\_\_\_

Fax \_\_\_\_\_ Account No.(s) \_\_\_\_\_

Bank contact person \_\_\_\_\_

**TRADE REFERENCES (Must Include Fax Number)**

Company Name \_\_\_\_\_ Street Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

Contact Person \_\_\_\_\_

Company Name \_\_\_\_\_ Street Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

Contact Person \_\_\_\_\_

**All information in this application is for the purpose of obtaining credit and is warranted to be true. I/we hereby authorize THE ABOVE LISTED BANK REFERENCE AND TRADE REFERENCES to provide any and all information regarding my/our accounts, personal and business to RSS. By signing this application I/we attest financial responsibility, ability and willingness to pay Rosenberger Site Solutions (RSS) invoices in accordance with the "Terms and Conditions"**

Company Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

E-mail of Authorized Signee :

# Rosenberger Site Solutions, LLC

## “Terms and Conditions of Purchase”

P.O. Box 4268, Lake Charles, Louisiana 70606-4268  
Phone: (337)-598-5250 Fax: (337)-598-5290

These general terms and conditions of purchase are applicable to each Order and represent the agreement between Supplier and Purchaser with respect to each order accepted by Supplier.

### 1. Definitions

1.1 The following definitions apply to this Agreement:

- (a) “Affiliate” means entities that are controlled by or are under common control of Rosenberger Site Solutions LLC.
- (b) “Applicable Specifications” means the functional, performance, operational, compatibility, and other specifications or characteristics of a Product described in applicable Supplier Documentation and such other specifications or characteristics of a Product provided by Supplier.
- (c) “Documentation” means, as applicable, any user guides, operating manuals, education materials, product descriptions and specifications, technical manuals, supporting materials, and other information relating to the Products or used in conjunction with the Products, whether distributed in print, magnetic, electronic, or video format, in effect as of the date the Product is shipped to Purchaser. Supplier shall only supply the Documentation applicable to the Product purchased by Purchaser.
- (d) “Employee” means those employees, agents, subcontractors, consultants, and representatives of Supplier provided or to be provided by Supplier to perform any Services pursuant to this Agreement.
- (e) “Hardware” means equipment and spare parts intended for the input, output, manipulation, communication, and transmission whether in print, magnetic, electronic, or video format, provided by Supplier under the accepted Order.
- (f) “Software” means computer programs in object code (including micro code) provided or to be provided by Supplier as part of the Product pursuant to an accepted order. The definition of Software also includes, as applicable, any enhancements, modifications, updates, or other changes to Supplier Software embedded in the Product.
- (g) “Order” means a document acceptable by Supplier for its Products. The Order can be, but not limited to, a Purchaser Purchase Order, an executed Quotation, or other order form acceptable to Supplier. Orders must be placed by an individual authorized by Purchaser to make such purchases on behalf of Purchaser.
- (h) “Products” means, individually or collectively as appropriate, Hardware, Software, Documentation, components, supplies, accessories, and other services, provided under any Order.
- (i) “Purchaser” means a corporation, business, individual or other business entity desiring to order Suppliers products and services.

(j) “Return Material Authorization” or “RMA” means written authorization from Supplier to return a Product to Supplier in case of (i) over shipment of Product; or (ii) receipt of incorrect product; or (iii) a warranty defect; or (iv) for out of warranty work requested by Purchaser; or (v) other returns authorized by Supplier.

(k) “Services” includes, but is not limited to, training, warranty support and time and materials services (if applicable), provided or to be provided by Supplier pursuant to this Agreement.

(l) “Supplier” means Rosenberger Site Solutions, Inc. (“RSS”)

**2. Purchase Orders.** Purchaser may issue to Supplier written Orders identifying the Products and Services Purchaser desires to obtain from Supplier. Such orders shall be consistent with the terms and conditions of this Agreement. Supplier shall promptly accept a valid Order by providing to Purchaser a written or a electronic acceptance of such Order, or by commencing performance pursuant to such Order. Supplier shall accept Orders or alterations thereto which do not establish new or conflicting terms and conditions from those set forth in this Agreement. Supplier shall also accept orders incorporating terms and conditions which have been separately agreed upon in writing by the parties. Supplier may reject an Order which does not meet the conditions described above by promptly providing to Purchaser a written explanation of the reasons for such rejection.

### 3. Shipment of Products and Inspection.

3.1 Supplier shall make all Products available to Purchaser’ authorized transportation carrier if specified on the Order. If a transportation carrier is not specified in the Order, Supplier will ship the Products using a carrier of its choice. Supplier will use commercially reasonable efforts to secure delivery of the Product on or before the date or dates set forth on the accepted Order.

(a) Unless otherwise expressly specified in the Order all deliveries of Products for international shipments, shall be made “Ex Works” Supplier’s shipping point per current INCOTERMS. Supplier will package the Products for export in order to sufficiently protect the goods from damage. Packaging is to be marked with appropriate markings, including but not limited to carrier, delivery address and Order number. Other importing country specific markings may be included as specified in the Purchaser’s order.

(b) Unless otherwise expressly specified in the Order for all domestic shipments, within the United States of America, Purchaser shall pay the shipping charges, and accept the risk of loss from Supplier’s location (hereinafter defined as “FOB Origin”).

(c) Supplier’s current shipping point is: 102 DuPont Drive, Lake Charles, LA 70607 or 205 Quantz Drive, Ste 101, Rock Hill SC 29730. Supplier reserves the right to change it shipping point at anytime.

- (d) Purchaser or its designated representative shall inspect all Products promptly upon receipt of Products (hereinafter "Inspection Period") and Purchaser shall notify Supplier of any defects, shortages, damage, over shipments, or nonconformance in any of the Products. Notwithstanding anything to the contrary, any Products not rejected in accordance with this Section 3 (d) by Purchaser within five (5) days after receipt shall be deemed to have been accepted by Purchaser. All claims for loss and damage shall be filed and processed by the Purchaser upon receipt of the Products at the designated site.
- (e) In the event that Supplier delivers less than the scheduled requirement and Supplier is notified of such shortage within the Inspection Period, Supplier shall correct such shortage within a commercially reasonable period of time after receipt of written notice from Purchaser or as otherwise agreed by the parties. If Supplier delivers more than the quantity ordered, Purchaser must return any excess Product at Supplier's expense or, in Purchasers option, retain such excess Product and remit to Supplier the amounts for the excess Product as mutually agreed by the parties. In all cases of return, Purchaser must receive an RMA number from Supplier.

#### **4. Transfer of Title.**

4.1 Title to and risk of loss and damage to the Products shall pass to Purchaser immediately upon delivery of the Products either to a common carrier, or to an employee or other agent of Purchaser, at Supplier's facility.

4.2 Except for any security interest established by Supplier under this Agreement, the Products are and shall be free and clear of all liens and encumbrances upon payment by Purchaser and Purchaser shall be entitled to use the Products without disturbance

#### **5. Payments.**

5.1 Except as otherwise provided in a particular accepted order, all payments will be due with thirty (30) days after the date of the invoice. Any amounts not paid when due shall thereafter bear interest until paid at the lesser of (i) one point five percent (1.5%) per month, or (ii) the maximum rate allowed by applicable law. Should Purchaser dispute the invoice or portion thereof, Purchaser shall be obligated to pay all undisputed amounts within the thirty (30) day payment period. Purchaser agrees to pay RSS all cost of collection including but not limited to reasonable attorney's fees, collection fees and court costs incurred by RSS to collect property due payments.

5.2 Purchaser shall pay all sales, use, property, excise or other federal, state and local taxes (other than those taxes based on Supplier's net income) based on the Product provided under any accepted Order.

#### **6. Prices and Credit.**

6.1 Price quotations and terms shall remain in effect for thirty (30) days from date on the quotation. Supplier reserves the right to change published pricing at any time, however Supplier will continue to honor pricing in all unexpired quotations.

6.2 Credit limits shall be determined and modified at the sole discretion of the Supplier. In the event that Purchaser is delinquent in payment, Supplier may suspend any shipment or delivery or refuse to perform any work until all past due amounts, including finance charges, have been paid in full.

**7. Cancellation, Returns and Termination.** All purchases shall be considered final except in circumstances beyond the control of Purchaser such as ordering the wrong Product or other unusual situations in which Supplier may accept return of Product.

7.1 Purchaser must submit all requests for cancellation or changes of Purchase Orders in writing and prior to the shipment date. In the event that Purchaser cancels or changes a Purchase Order, Purchaser agrees to pay a restocking fee of not less than 35% for standard Products and 100% for custom Products of the dollar value of the Order line item(s) so cancelled. No cancellations shall be allowed once the Product has been shipped by Supplier to Purchaser unless specifically approved in writing by an authorized representative of Supplier.

7.2 Purchaser may submit a request for return of Products once Products have been delivered to a common carrier, or to an employee or other agent of Purchaser, at Supplier's facility within seven (7) days after receipt. All requests by Purchaser to return Products within that period must be submitted in writing to Supplier utilizing Supplier's Return Request Form and shall be subject to cancellation fees as listed herein. Supplier shall, at its sole option, either accept or reject the Purchaser's return of Products. All returned Products must be in the original packaging, unopened and unused unless the Product packaging was damaged and cannot be used to return such Products.

7.3 Supplier shall evaluate all Return Request Forms in a timely manner. Supplier may, at its sole discretion, issue Purchaser written authorization to ship Product back to Supplier. The issuance of a RMA is not acceptance of the returned Product, merely authorization to return the Product for inspection. In the event that Supplier deems that the request is not made in compliance with the terms of this Agreement, Supplier shall notify Purchaser in writing that the request for return has been denied and payment shall be required. Supplier will return the Product to Purchaser at Purchaser's expense.

7.4 Either party may immediately terminate any Purchase Order without penalty by giving written notice to the other party in the event of (i) the liquidation or insolvency of the other party, (ii) the appointment of a receiver or similar officer for the other party, (iii) an assignment by the other party for the benefit of all or substantially all of its creditors, (iv) entry by the other party into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, or (v) the filing of a meritorious petition in bankruptcy by or against the other party under any bankruptcy or debtors' law for its relief or reorganization.

7.5 Supplier may terminate an Order, or any portion thereof, if Purchaser fails to pay any undisputed amount when due pursuant to such Order and such failure continues for a period of fifteen (15) days after the last day payment is due.

7.6 Either party may terminate an order if the other party has not cured a default within the cure period. For avoidance of doubt, the cure period shall be fifteen (15) days for non-payments and thirty (30) days for a material default.

#### **8. WARRANTY**

8.1 Supplier warrants that during the Warranty Period, the Product will be free from defects in material and workmanship under conditions of normal use and will operate substantially in accordance with the applicable Documentation for a period of twelve (12) months from the date of shipment. This Warranty is a return to factory warranty only.

8.2 Should the Product fail to comply with the warranty set forth in Section 8.1 above during the Warranty Period, Purchaser's

sole and exclusive remedy and Supplier's sole obligation shall be, in Supplier's sole discretion, to repair or replace (or cause to be repaired or replaced) the Product at no additional charge to Purchaser, provided that Purchaser has promptly reported same to Supplier in writing and Supplier has, upon inspection, found such Product actually to be defective. All replaced Product parts will become the property of Supplier. With respect to any Product that is subject to warranty pursuant to Section 8.1 above, Supplier shall, at its cost, pay for inspection and labor services, if such services are deemed necessary by Supplier to perform the repair or replacement of the Product, and for the costs of any necessary shipment and handling to ship any Product or part thereof from Supplier back to Purchaser.

8.3 The warranty provided in Section 8.1 above does not include damage to the Product resulting from a cause other than part defect or malfunction, including: (a) improper storage, misuse or unreasonable use; (b) neglect, accident, fire, lightning, power or air conditioning failure, unusual physical or electrical stress caused by forces or elements external to Product, or other hazard; or (c) installation, testing, operation, maintenance, servicing or modification of the Product or part thereof by anyone other than Supplier or a Supplier-authorized technician. The warranty in Section 8.1 above also does not apply to any Product if the original identification marks (e.g., serial number) have been removed or altered.

8.4 Supplier warrants that all Services performed pursuant to this Agreement will be performed in a professional and workmanlike manner, consistent with reasonable and generally accepted professional standards and practices prevailing.

8.5 SUPPLIER DOES NOT WARRANT THAT ANY INFORMATION, COMPUTER PROGRAM, SUPPLIER'S EFFORTS OR ANY PRODUCTS OR SERVICES PROVIDED BY SUPPLIER WILL FULFILL ANY OF PURCHASER'S PARTICULAR PURPOSES OR NEEDS, NOR DOES SUPPLIER WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 8, NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, ARE MADE BY SUPPLIER TO CUSTOMER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE SPECIFICALLY EXCLUDED.

## 9 INDEMNIFICATION.

9.1 Supplier shall indemnify, defend, and hold harmless Purchaser from and against any loss, cost, expense, or liability ("**Losses**") resulting from or arising out of a claim brought by a third party ("**Third Party Claim**") against Purchaser to the extent that such Third Party Claim alleges the infringement of such third party's U.S. patent or copyright by the Product. The foregoing indemnity shall not apply if the infringement arises out of: (a) specifications or designs furnished by Purchaser and implemented by Supplier at Purchaser's request; (b) the Product being modified by, combined with, added to, interconnected with and/or used with any equipment, apparatus, device, data, or software not supplied or approved by Supplier; (c) the modification to the Product by any person or entity other than Supplier or a Supplier authorized technician; or (d) misuse of the Product (each an "**Exclusion**").

9.2 If a Third Party Claim under Section 9.1 above has occurred, or in Supplier's opinion is likely to occur, Supplier shall, at Supplier's option and expense do one of the following: (a) procure for Purchaser the right to continue using the affected Product; (b) replace with non-infringing alternates or modify the Product so that it becomes non-infringing but its functionality after modification is substantially equivalent; or (c) accept the return of the affected

Product, and refund to Customer the Fees for the affected Product depreciated or amortized by an equal annual amount over a three (3) year period beginning from the date of shipment of the affected Product. The collective obligations of Supplier pursuant to Section 9.1 and this Section 9.2 state the sole and exclusive liability of Supplier, and Purchaser's sole and exclusive remedy, with respect to intellectual property infringement or misappropriation by the Product.

9.3 Purchaser shall indemnify, defend and hold harmless Supplier from and against any Losses resulting from or arising out of a Third Party Claim brought against Supplier to the extent that such Third Party Claim alleges the infringement of a third party's U.S. patent or copyright and is based upon an Exclusion.

9.4 Promptly after a Party seeking indemnification obtains knowledge of the existence or commencement of a Third Party Claim for which it is entitled to be indemnified under this Section 9, the Party to be indemnified ("**Indemnified Party**") will notify the other Party ("**Indemnifying Party**") of such Third Party Claim in writing, provided, however, that any failure to give such notice will not waive any rights of the Indemnified Party except to the extent that the rights of the Indemnifying Party are actually prejudiced thereby. The Indemnifying Party will assume the defense and settlement of such Third Party Claim; provided, however, that the Indemnified Party may join in the defense and settlement of such Third Party Claim and employ counsel at its own expense, and will reasonably cooperate with the Indemnifying Party in the defense and settlement of such Third Party Claim. The Indemnifying Party may settle any Third Party Claim without the Indemnified Party's written consent unless such settlement: (a) does not include a release of all covered claims pending against the Indemnified Party; (b) contains an admission of liability or wrongdoing by the Indemnified Party; or (c) imposes any obligations upon the Indemnified Party other than an obligation to cease using any infringing items.

10. **LIMITATION OF LIABILITY.** SUBJECT TO SECTION 10.3 BELOW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR:

10.1 ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES, INCLUDING LOSS OF USE, LOSS OF OR DAMAGE TO RECORDS OR DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, REVENUE AND/OR PROFITS, SUSTAINED OR INCURRED REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, INCLUDING NEGLIGENCE, STRICT LIABILITY, INDEMNITY OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN AND REGARDLESS OF WHETHER SUCH PARTY HAD RECEIVED NOTICE OR HAD BEEN ADVISED, OR KNEW OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

10.2 DIRECT DAMAGES IN EXCESS OF: (a) IN RESPECT OF ANY PRODUCT PURCHASED BY PURCHASER, THE FEES ACTUALLY PAID BY PURCHASER TO SUPPLIER FOR SUCH PRODUCT ACTUALLY GIVING RISE TO SUCH LIABILITY; AND (b) IN RESPECT OF ANY SERVICES PURCHASED BY PURCHASER FROM SUPPLIER, THE FEES ACTUALLY PAID BY PURCHASER TO SUPPLIER FOR THE SERVICES ACTUALLY GIVING RISE TO SUCH LIABILITY

10.3 No action, regardless of form, arising out of the transactions under this Agreement, may be brought by either Party more than two (2) years after the cause of action is discovered, or through the exercise of reasonable diligence, should have been discovered, by the claiming Party.

**11. EXPORT REGULATIONS.** Neither Party shall, in violation of the applicable export regulations, export or re-export the Product to locations or individuals which are prohibited by applicable export regulations. Purchaser will be responsible for complying with all applicable local import regulations.

**12. BINDING NATURE AND ASSIGNMENT.** These terms and conditions shall be binding on the parties and their respective successors and assigns and may not be assigned without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing either party may assign its rights and obligations under these terms and conditions to any party who acquires (i) a controlling interest in that party or (ii) all or substantially all of the assets in that party's business.

**13. FORCE MAJEURE.** Supplier shall not be deemed to be in default of an provision of these terms and conditions, or for the failure in performance of its obligations hereunder resulting from acts or events beyond the reasonable control of Supplier, including acts of God, civil or military authority, acts or threats of terrorism, civil disturbance, war, riot, strike or labor dispute, fires, floods, or act of government (each a "Force Majeure Event"). Such Force Majeure Event, to the extent it prevents Suppliers performance or any other undertaking under these terms and conditions, will extend the time for performance for as many days beyond the applicable performance date as it is required to correct the effects of such Force Majeure Event.

**14. SEVERABILITY.** Any invalidity or unenforceability of any provision of these Terms and Conditions in any jurisdiction shall not invalidate or render illegal or unenforceable the remaining provisions hereof.

**15. GENERAL PROVISIONS.** These Terms and Conditions shall be governed by and be construed in accordance with the laws, other than choice of law rules, of the State of Louisiana. These Terms and Conditions and each Accepted Order constitutes the entire agreement between the parties with respect to the subject matter hereto and thereof, and there are no oral or written representations, understandings or agreements relating hereto or thereto which are not fully expressed herein or therein. No waiver or discharge hereof or any Accepted Order shall be valid unless confirmed in writing and executed by the part against whom such waiver or discharge is sought or modified.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date