



W.F. YOUNG

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W. F. Young, Inc.

Standard Terms and Conditions of Purchase

August 2022 Version

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These Terms and Conditions apply to and form an integral part of all requests for proposal, quotations, and Purchase Orders. Customer expressly rejects the applicability of any other general terms and conditions or stipulations of Supplier.

1. Definitions

- 1.1 "Affiliate" means, with respect to any entity, any other entity that directly or indirectly controls, is owned by, controlled by or under common ownership or control with such entity.
- 1.2 "Agreement" means any agreement that references these Terms and Conditions.
- 1.3 "Buyer" means W.F. Young or Affiliate thereof that issues an Order referencing the Agreement and/or these Terms and Conditions.
- 1.4 "Control" means another entity if it has the power to direct or cause the direction of the management or policies of the other entity whether through ownership of voting securities or otherwise.
- 1.5 "Customer" means W.F. Young, Inc., located at 302 Benton Drive, East Longmeadow, MA 01028, the issuer of the Order, request for proposal, or Agreement.
- 1.6 "Delivery Date" means the date of delivery of Goods and/or Services as specified in an Order.
- 1.7 "Goods" means goods, products, materials, liquids, equipment, design, software, stored goods, and all related documentation to be supplied as specified in the Order.
- 1.8 "Intellectual Property" means all inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature. Such information includes, without limitation, designs, processes, drawings, prints, specifications, photographs, specifications, reports, data, technical information, and instructions.
- 1.9 "Lead Time" means the time that Buyer and Supplier have agreed is the total time needed for Supplier to meet a Delivery Date for Goods following receipt of a requirement for such Goods, as measured based on the date of receipt of the relevant Goods at a Buyer's facility.
- 1.10 "Order" means a paper or electronic document sent by Buyer to Supplier, to initiate the ordering of Goods, including modifications thereto. The phrase, "in connection with the Order" includes performance of the Order, performance in anticipation of the Order, and preparation of a bid or proposal for the Order. Where the context permits, the term Order includes Agreement.
- 1.11 "Party" or "Parties" means Buyer and/or Supplier, individually or collectively, as the context requires.
- 1.12 "Supplier" means legal entity providing Goods and/or Services or otherwise performing work to an Order or Agreement.
- 1.13 "Terms and Conditions" means these W.F. Young, Inc. Standard Terms and Conditions of Purchase.

2. Acceptance

These Terms and Conditions, together with the relevant Order issued by Customer, set forth the Terms and Conditions for the supply of Goods and/or Services and/or the delivery of Goods and/or Services by Supplier to Customer and will be binding to Parties at Supplier's acceptance (the binding Agreement). Any changes by Supplier are binding only if accepted by Customer in writing. Performing of any part of a Purchase Order by Supplier will operate as Supplier's unconditional acceptance thereof.

3. Commercial Conditions

- 3.1 Supplier shall perform the Services against the price(s) mentioned in the Agreement. Unless expressly stated to the contrary, prices for Goods and/or Services are (i) fixed and firm (ii) exclusive of any Value Added Tax but (iii) inclusive all other taxes, duties, levies, fees (including license fees), charges and inclusive all costs.
- 3.2 Invoices shall be dated no earlier than the date of shipment or delivery of Goods and/or Service, unless specifically agreed to in writing by the Customer. Provided and to the extent that the invoice is correct and not under dispute, and unless otherwise agreed to by the Parties, Customer will pay non-discountable invoices for Goods or Services thirty (30) days after receipt of invoice, required delivery date, acceptance, or the date any applicable discrepancy is resolved, whichever date is later.
- 3.3 In case an invoice is under dispute, Supplier has no right to postpone its obligations. Customer has the right to set off amounts it owes to Supplier or any of its Affiliates against amounts that Supplier or any of its Affiliates owes to Customer.
- 3.4 To the extent Services are supplied at a reimbursable basis, Supplier shall keep records of all costs, expenditures and hours worked and shall provide Customer access thereto.

4. Compliance

- 4.1 Supplier shall comply with all applicable (inter)national, federal, state, provincial and local laws, rules and regulations, standards, and orders in connection with the performance of the Agreement, including all applicable laws, rules, and regulations on international trade, such as embargos, import and export control and sanctioned party lists.
- 4.2 Supplier expressly warrants that it has good and marketable title to the Goods and deliverables of the Services supplied, including right to grant Customer intellectual property right(s). Supplier holds any and all licenses, permits, end-user statements and any other documents, which are required in the country of origin, of transit and of destination to perform its obligation and will immediately notify Customer of any legal restrictions.

5. Duty to Proceed

Supplier shall proceed diligently with the performance of this Agreement. Except as expressly authorized in writing by Buyer, no failure of Supplier and Buyer to reach any agreement regarding a dispute related to this Agreement or any Order shall excuse Supplier from proceeding. Supplier guarantees that it will supply without delay or interruption the Goods and/or Services. Supplier shall immediately notify Customer of any foreseeable delay.

6. Delivery, Warranty, and Acceptance of Goods

- 6.1 Delivery shall be affected in adequate packaging. Costly and re-usable packaging shall be taken back by Supplier. Supplier shall timely provide Customer with (copies of) all applicable licenses, documents, information, specifications, and instructions necessary for safe and proper transport, use, treatment, process, and storage of the Goods and with all certificates of analysis/conformity as customarily supplied. If applicable, stored Customer's Goods will be redelivered in the original quantity, state, and condition.
- 6.2 Supplier warrants that the Goods will be in conformity with the specifications and requirements, be unused, of good materials and workmanship, free from any and all defects and from any and all liens and encumbrances, pledge or right of retention, merchantable, and suitable for the intended purpose. These warranties shall not be deemed to exclude warranties and/or rights that Customer may have or obtain and shall extend to Customer and its customers.
- 3.2 Customer is entitled to reject any Goods, which are delivered (i) not at the agreed time, (ii) not in the agreed volume and/or quantity, (iii) in inappropriate or damaged packaging or (iv) with other defect(s), for risk and account of Supplier and without prejudice to Customer's right to compensation for the losses and damages suffered as a result of Supplier's non-compliance.
- 3.3 Inspection, testing, acceptance, or payment does not release Supplier from its obligations and warranties.

7. Performance and Acceptance of Services

- 7.1 Supplier warrants the quality and the results of the Services. Supplier shall perform the Services in accordance with the requirements and specifications of the Agreement, observing due skill and care, using proper and well-maintained materials, and employing sufficiently qualified staff.
- 7.2 Supplier shall properly and timely instruct Customer of any special use or treatment regarding the Services.
- 7.3 Only written confirmation of acceptance shall constitute acceptance of the Services performed.

8. Transfer of title

- 8.1 The title of the Goods and deliverables of the Services shall pass to Customer upon delivery at the delivery point as stated in the Agreement. However, if Customer pays for any Goods prior to delivery, title shall pass to Customer upon payment.
- 8.2 The title and risk of Goods under a rental service agreement remain with Supplier.
- 8.3 The title of stored Customer's Goods under a warehousing agreement remains with Customer. The risk of such Goods is transferred to Supplier at acceptance of the Goods and ends after delivery of these Goods to Customer.
- 8.4 Supplier shall identifiably store any raw materials and semi-finished goods allocated for the manufacture and or production of the deliverables and the finished deliverable itself. The risk of such goods remains with Supplier until acceptance thereof.

9. Inspection and Audit Rights

- 9.1 Supplier (which, for the purposes of this Section, includes Supplier and its suppliers, subcontractors and business partners) shall at any time, and after reasonable notice by Buyer, (i) grant to Buyer, Buyer's authorized representatives and any competent regulatory authority, unrestricted access to (or if requested by Buyer, provide copies of Suppliers books, records, and documentation (including, without limitation, those pertaining to quality, legal and regulatory compliance, inspection and testing of the Goods and Services, physical and network procedures and controls, compliance programs, and any other requirement or obligation under the Order wherever these may be located, and (ii) provide Buyer, Buyer's authorized representatives, and any competent regulatory authority the right to access Supplier's premises and to perform any type of inspection, test, audit or investigation in connection with the Order, for the purpose of enabling Buyer to verify compliance with the requirements set forth in the Order.
- 9.2 Any corrective action requested by Buyer, Buyer's authorized representatives or regulatory authority following any such inspection, test, audit or investigation shall be implemented by Supplier at Supplier's cost.

10. Changes

- 10.1 The implementation of any and all changes of and/or improvements related to the Goods and/or (performance of the) Services including (business) processes, (raw) materials (including supply source) and/or any other changes that might affect the specifications of the Goods and/or the Services require the prior written approval of Customer. Supplier will inform Customer well in advance of such changes and will enable Customer to control and test the Goods.
- 10.2 Customer reserves the right to issue a written change order or amendment to the Order including changes in whole or in part to: (i) any designs, specifications, drawings, and data ; (ii) quantity; (iii) shipping, waste reduction or packing instructions; (iv) place of delivery; (v) time of delivery; (vi) quality requirements; (vii) Buyer Items, such as equipment, materials, liquids or stored goods or (f) any other matters affecting this Order.
- 10.3 Except as set forth herein, or as otherwise agreed, if any Change under this Section causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both, Buyer shall modify the Order accordingly ("Adjustment Claim").
- 10.4 If the cost of Goods or material is made obsolete or excess as a result of a Change included in the Adjustment Claim, Buyer may direct the disposition of Goods or material. Supplier must submit an Adjustment Claim in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's procurement representative no later than 30 days after Supplier's receipt of the Change. Supplier acknowledges and agrees that changes in delivery and performance schedule are normal and anticipated in the course of the Order. Notwithstanding any pending Adjustment Claims, Supplier shall diligently proceed with the performance of the Order, as directed by the Buyer.

11. Indemnification, Liability and Force Majeure

- 11.1 Supplier shall be liable and hold Customer, its Affiliates, and their directors and employees ("Indemnified Parties"), harmless from and indemnify them against any and all actual or contingent damage, loss, injury/death, costs and claims suffered by or brought against Indemnified Parties, resulting from or connected with the Agreement, the use and/or sale of Supplier's Goods by Indemnified Parties or any third party, the performance of the Services and the deployment of Supplier's Services by Indemnified Parties or any third party, except to the extent that this is caused by Customer's willful misconduct or gross negligence.
- 11.2 Supplier is fully liable for the correct and timely payment of all taxes and levies indebted in connection to the performance of the Agreement and will indemnify Indemnified Parties against all claims and damages relating to its obligations concerning taxes, contributions, and any claims of third parties, including the Government.
- 11.3 In no event shall Customer be liable for any direct and indirect damages (including but not limited to lost revenue, lost profits or other consequential or incidental damages) based upon the Agreement.
- 11.4 Neither party shall be liable towards the other party for any non-fulfillment of the Agreement to the extent fulfillment thereof has been delayed, interfered with, or prevented by an event entirely beyond the control of the party concerned, was not for its risk and not reasonably foreseeable ("Force Majeure"), provided that the party invoking Force Majeure shall use its best efforts to fulfill its obligations by any means possible. The mere fact of late supply of materials, labor or utilities shall not be deemed Force Majeure. In case a situation of Force Majeure continues for more than 30 days, Customer shall be entitled to (partly) terminate or cancel the Agreement by written notice. Customer may purchase similar goods and/or services from third parties during any period Supplier is unable to fulfill its obligations. The quantities affected shall be excluded from the calculation from any (minimum) volumes.

12. Confidentiality

Any and all information provided by or on behalf of Customer shall be treated as confidential and shall only be used by Supplier for the purpose of this Agreement. Disclosing information is only allowed to any of its employees or a third party on a strict need-to-know basis, except in case Supplier is required to disclose the information by virtue of a court order or statutory duty, provided that the Supplier shall immediately inform Customer. Supplier shall upon demand promptly return to Customer all such information. Supplier shall not retain a copy thereof. Supplier shall treat the existence of the Agreement as confidential. Supplier or its employees will sign a confidentiality agreement at request.

13. Ownership and intellectual property

- 13.1 Any and all information, property or materials disclosed to Supplier remains the property of Customer. Supplier is not entitled to make use of or refer to any trademark, trade name, domain name, patent, design, copyright, or other intellectual property right of Customer or any of its Affiliates, unless it has obtained prior written consent of Customer. Any authorized use shall be strictly in accordance with the instructions and for the purposes specified.
- 13.2 Supplier warrants that the Goods and/or Services, alone or in combination, will not result in or give rise to any infringement or misappropriation of any intellectual property right of a third party.

- 13.3 Supplier hereby assigns by way of present and future assignment all intellectual property rights, know-how, copyrights, and other rights developed by or on behalf of Supplier explicitly for or on instructions of Customer.
- 13.4 All intellectual property rights to software, including source code, sub-software and documentation, developed explicitly for Customer or on Customer's instructions shall rest with or be transferred to Customer. Intellectual property rights to other software shall remain with Supplier and Supplier shall grant Customer a non-exclusive, non-transferable, irrevocable, perpetual license not limited to specific equipment or location.

14. Insurance

The Supplier shall maintain third party liability insurance, including without limitation, product liability and professional liability (errors and omissions) with limits of not less than \$1,000,000 each occurrence and \$1,000,000 in the aggregate. Such limits may be afforded through any combination of primary and excess limits. The insurance policies to cover the risks resulting from or connected with the Order. At the request of the Customer, Supplier will provide the insurance certificates evidencing Supplier's coverage and keep Customer informed of any changes.

15. Termination for Convenience

- 15.1 Buyer may terminate the Purchase Order at its convenience, in whole or in part, at any time prior to shipment by (written or electronic) notice to Supplier.
- 15.2 Upon termination, in accordance with the Buyer's written direction, Supplier will immediately: (i) cease work and place no further subcontracts or orders for materials, services or facilities, except as necessary to complete the continued portion of the Order; (ii) prepare and submit to Buyer an itemization of all completed and partially completed Goods and/or Services; (iii) if requested by Buyer, deliver to Buyer any and all Goods and/or Services completed up to the date of termination at the pre-termination Order price; and (iv) if requested by Buyer, deliver any work-in-process.
- 15.3 Buyer shall not be liable to Supplier for an Order terminated prior to the commencement of Lead Time.
- 15.4 In the event Buyer terminates an Order or Agreement for its convenience after performance has commenced, Buyer will compensate Supplier only for the actual and reasonable work-in-process costs incurred by Supplier on Goods and/or Services required to be delivered within the Lead Time period, calculated from Buyer's issuance of the notice of termination. If the Order does not specify Lead Time, Lead Time shall be the reasonable average time required to manufacture and deliver the Goods and/or perform the Services. Supplier shall use reasonable efforts to mitigate its own and Buyer's liability under this Section. In order to receive compensation, Supplier must submit its termination claim, by means of a form and process directed by Buyer, within 90 days from the effective date of the termination.
- 15.5 Buyer shall not be liable to Supplier for costs or damages other than as described above, and in no event for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the price allocated to the portion of the Order terminated.

16. Termination for Default

Buyer is entitled to suspend at any time the performance of its obligations in whole or in part or terminate the Agreement with immediate effect, without prejudice to its right to claim damages and without any compensation to or indemnification of Supplier (i) in case Supplier has been declared bankrupt, is in a state of liquidation, has ceased or suspended whole or substantial part of its business, is subject of a court order or preventative legal scheme of settlement (ii) in case of non-compliance with import, export or chemical control regulations or the provisions of safety, health, environment and security (iii) in case of not approved changes in accordance with article 10. After such termination Customer may return received Goods and/or Services in whole or partly against repayment and retransfer of ownership therein to Supplier.

17. Governing Law and Forum

This Agreement shall be governed exclusively by the laws of Massachusetts with the exception of its conflict of laws principles. The United Nations Convention on contracts for the International Sale of Goods, concluded at Vienna on 11th of April 1980, shall not be applicable. Any transport of Goods to or from a warehouse which may be part of the Services is subject to the provisions of the treaty governing the transport mode at matter.

18. Dispute Resolution

Any dispute arising from the Purchase Order which the parties are unable to amicably resolve shall be submitted to either the Federal or State courts of Massachusetts, without restricting any rights of appeal. Pending a dispute neither party shall be excused from performing any of its obligations under the Agreement, except for obligations directly affected by the dispute.

19. Miscellaneous

- 19.1 If any provision(s) of these General Purchase Conditions should be or become ineffective or invalid the other provisions will not be affected thereby. Parties agree to replace the ineffective or invalid provision(s) by a provision of similar import, which reflects as closely as possible the intent of the original clause.
- 19.2 Failure by either party to require strict performance by the other party of any obligation hereunder shall in no way affect its right thereafter to enforce any obligation, nor shall a waiver by either party of any breach be held to be a waiver of any previous or later breach. No waiver will have any effect unless specific, irrevocable and in writing.
- 19.3 Supplier shall not assign the Agreement in whole or in part without Customer's written consent. Such consent shall not relieve Supplier from, and shall be subject to compliance with, any of the obligations under the Agreement. Customer is entitled to assign this Agreement or any part thereof to any Affiliate on prompt notice to Supplier.
- 19.4 Nothing in the Agreement shall be deemed to constitute either party as the agent of the other or create a partnership, joint venture or employment relation between the Parties.
- 19.5 Expiry, termination or cancellation of the Agreement shall not affect any right or obligation, which expressly or by its nature survives such expiry, termination or cancellation, including but not limited to representations, warranties, confidentiality obligations, intellectual property rights and indemnifications.

20. Order of Precedence

The order of precedence provision in an Agreement, if any, shall prevail over this Section.

If there are any inconsistencies or conflicts in the provisions applicable to the Order, precedence shall be given in the following order: (i) the face sheets of the Order including the price, price adjustment terms, specifications, shipping, quality requirements, drawings, work statements, and modifications to the Agreement and/or these Terms and Conditions that specifically reference the section being modified; (ii) these Terms and Conditions; and (iii) terms of the Agreement under which the Order is issued; (iv) terms outlined in a Supply Agreement.