

## TERMS AND CONDITIONS

**The Equal Opportunity and Affirmative Action Clauses**, as set forth by the Department of Labor, 41 C.F.R. Sections 60-1, 4 (a), 60-250.4 and 60-741.4 are hereby incorporated by reference herein insofar as they are required by such regulations and unless exempted by applicable statutes, rules, regulations or orders.

**IMPORTANT:** For you to be authorized to perform the services and deliver the goods at the price stated herein, this Purchase Order must be signed by both you and authorized signatory of Cole & Weber / Red Cell ("Agency"). Keep one copy of this Purchase Order for your file. The materials you submit (the "Materials") must be in our opinion satisfactory for the purpose for which they are ordered. Agency's Purchase Order number and job number must appear on all packages, cartons and skids as well as invoices and packaging slips. Supporting signed shipping receipts and/or other documentation showing proof of shipment and quantity will be required when invoicing. Furnish invoice along with a copy of the Purchase Order as soon as work is completed and no later than 30 days after completion of such services. It is agreed that time and delivery is of the essence and that Agency may, at its election, cancel this Purchase Order or any part hereof if this Purchase Order is not fulfilled within the time specified or, if no time is specified, within a reasonable time. This Purchase Order may be cancelled by Agency at any time prior to its acceptance of the Materials covered by this Purchase Order, upon notice to Supplier. In such event, unless such termination is based on Supplier's breach, Agency shall be liable to pay Supplier, in lieu of the price specified on the reverse side hereof, any verified direct costs incurred by Supplier in the performance of Supplier's obligations hereunder prior to such cancellation, provided, however, that the total amount of such costs shall not exceed the price specified on the reverse side of this Purchase Order.

**ASSIGNMENTS AND CONFIRMATION:** Agency is acting as agent for the Client named on the reverse side hereof (the "Client"). You are acting as an independent contractor and the Materials, including without limitation all artwork, photographs, scripts, ideas, concepts, music, characters and other property furnished hereunder, are specially commissioned for but are not limited to, inclusion in advertising and/or commercial materials. Subject solely to the limitations specifically set forth on the reverse side hereof (if any), all Materials shall be deemed to be works for hire for Client under the U.S. Copyright Act, and will be and remain the absolute and exclusive property of Client, its successors and assigns, in perpetuity. You further agree to execute and cause others who in any way contribute to the creation of the Materials to execute all further documents that, in the judgment of the Client and/or Agency, are required or useful to establish, protect or enforce the rights herein granted or confirmed. To the extent necessary to vest full ownership of the Materials with Agency, you hereby irrevocably sell, transfer, and assign to Client, its successors and assigns, without limitation, except such limitations as are specifically set forth on the reverse side of this page (if any), all copyright and other ownership rights, interests and privileges in the Materials throughout the world, of whatever kind or nature, with the unqualified right of the Client to use, assign, transfer or license the Materials and all elements thereof, in whole or in part, and to create and use, and to assign, license or authorize others to create and use, derivative works based thereon or to alter, modify, adapt, distribute or otherwise use and exploit the Materials, derivatives thereof or any elements of any of the in any form or medium now known or hereafter created or devised. Without limiting the generality of the foregoing, Supplier hereby waives any and all claims of "moral rights" and other rights of any kind or nature that it has related to the Materials and hereby conveys to Agency any such rights of Supplier as may exist without reservation or limitation. Offset positives, negatives and/or electronic digital tapes used in the production of this job are to become the property of the Agency to be retained in Supplier's plant for Agency's future disposition. Supplier shall bear the risk of loss while such items are in its possession.

**REPRESENTATION AND WARRANTIES:** You represent and warrant that: (a) you have the unencumbered right and authority to sell, transfer and assign the rights herein conveyed, or in the case of Materials under the work for hire provisions of the U.S. Copyright Act to confirm the Client's authorship thereof under such statute; (b) you have not made and shall not make any disposition of any copyright or other interest in any of the Materials, whether in assignment or encumbrance, and confirm that all copyright and other rights stated herein are subject to the full and exclusive enjoyment by Client; (c) the Materials, and the ideas they express, are original and do not violate or infringe the rights of any other persons, and all assignments, releases, permissions, clearances, consents and waivers (collectively, "Releases") have been obtained, in writing, from any and all persons whose name, likeness, voice or other attribute is contained in the Materials produced in connection with this Purchase Order and may be used throughout the world and in perpetuity, without limitation, and Supplier shall furnish Agency with a copy of such Releases; and (d) the prices specified herein are no less favorable than those which you would be willing to offer to or accept from any other party for the services to be rendered or the goods to be sold and such prices comply in all aspects with the laws, rules and regulations relating thereto.

**INDEMNITY:** You hereby indemnify and hold harmless Agency and Client and their respective subsidiaries, affiliates, parents, partners, employees, agents and licensees from and against any loss, cost, liability, damage or expense (including reasonable attorney's fees and expenses) any of them may incur or be liable for arising out of (a) any breach or alleged breach of any of the foregoing representations and warranties; (b) the performance of this Purchase Order by you (including, but not limited to, your employees, agents, subcontractors, and others designated by you); and (c) the use or reproduction, in any manner whatsoever, of the Materials.

**CONFIDENTIALITY:** Supplier covenants and agrees that it will not, at any time, disseminate, reveal or otherwise make available to any person, or use for its own purposes, any information of a proprietary or confidential nature concerning Agency or Client obtained by it regarding, but not limited to, trade secrets and confidential information, advertising matters, ideas, plans, techniques and accounts, products, business, customers or methods of operation, except as otherwise required in the performance of its obligations hereunder. Prior to using the Materials for self-promotional purposes you must obtain written approval from Agency.

**TAX:** If a sales/use tax applies to this order, you should compute and add such tax to your invoice. All taxable charges shown on your invoice must be included in making such computation. Liability for all sales and use or similar taxes and any penalties and interest charges due on these taxes shall be your sole responsibility. In the event Agency is required to pay such amounts for whatever reason, you agree to immediately reimburse the Agency therefore.

**GIFTS AND CONFLICTS OF INTEREST:** You shall not make or offer a gratuity or gift of any kind to Agency employees or their families. You shall not engage in any activity with Agency employees, competitors, or affiliates that could be perceived as creating a conflict of interest situation unless, after full disclosure of all relevant facts, Agency agrees that no conflict in fact is present.

**RECORDS:** Supplier agrees to keep such books and records as shall readily disclose the basis for any charges ordinary or extraordinary billed to Agency under this Purchase Order, and shall make them available for examination and audit by Agency and/or Client or an outside auditor chosen by and paid for by Agency and/or Client for a period of two years after receipt by Supplier of final payment under this Purchase Order. For such period of two years, Agency and/or Client shall have the right to audit the books and records relating to all such charges, and Supplier, upon request of Agency or Client, shall make all such books and records available for such examination. If, upon such audit, Client or Agency shall determine that Supplier's charges exceed the amounts properly chargeable to Agency or Client as the case may be, Supplier shall promptly refund to Agency or Client, as appropriate, the amount of such overcharges.

**PHOTOGRAPHERS NOTE:** Advances cannot be requested in excess of 50% of expenses. All usages are effective date of first use. All props and wardrobe that have been purchased must be delivered to the Agency directly, unless otherwise authorized in writing by Agency. Talent vouchers are to be signed by an authorized signatory of Agency. Film format must be stated on your estimate and priced accordingly. If you are shooting in b/w or color negative film, the estimate must include charges for prints. If print order exceeds amount estimated, you must promptly notify Agency's art buyer ("Art Buyer") and get Art Buyer's approval before additional prints are ordered. If film format is changed at the time of the shoot, you must notify Agency. Print orders will be handled directly through you. Agency will not accept or pay invoices billed directly to Agency for prints from outside vendors other than you. You must send job invoices within 30 days after shoot date. Weather day rates for your fee and crew will be billed at a negotiated rate with a maximum of 1/2 day rate. Cancellation policy will be billed at a negotiated rate at the time of cancellation. Backup receipts (or copies thereof) must accompany your final invoice. Estimates must be itemized and broken out in detail. All necessary models, property, accessory and other releases must be furnished to us on or before completion of your services. Any expense for which reimbursement is sought must be listed on the invoice to permit an easy comparison with the estimate. All expenses must be substantiated by itemized vendor's or subcontractor's invoices, studio vouchers, photo lab packing slips or similar documentation. All expense discounts, including those for purchasing and processing of photographic materials, must be passed on to Agency and Client.

**PAYMENTS:** Payments shall be made by Agency, at such time as Agency is in receipt of satisfactory materials, releases and invoices, as herein above described. Agency's payment for the Materials shall not constitute its acceptance thereof and the Materials shall be received subject to inspection, approval and privilege of return at Supplier's expense if not in compliance with the specifications hereof. Defects are not waived by Agency's failure to notify Supplier of such defects upon receipt of the Materials.

Any and all additional costs incurred due to changes in this Purchase Order specifications/overages must be submitted in writing and approved by Agency along with estimate/explanation and Agency is not responsible for any unapproved additional costs.

**LIMITATION OF LIABILITY:** In no event shall Agency be liable to Supplier for more than the total amount actually due and payable to Supplier hereunder. UNDER NO CIRCUMSTANCES SHALL AGENCY BE LIABLE TO SUPPLIER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING UNDER CONTRACT, WARRANTY, OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER AGENCY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

**INSURANCE:** Supplier shall carry and maintain commercially reasonable amounts of ordinary and necessary business insurance including comprehensive general liability (a limit of at least One Million Dollars per occurrence) and the statutory requirements for worker's compensation, and upon request, shall provide Agency with certificates of insurance that list Agency as additional insured. The policy shall provide that if the policy is terminated or reduced below the minimum liability limits prescribed herein, the insurer will give Agency ten (10) days prior written notice and Agency shall have the right to terminate this Purchase Order effective upon such termination or reduction.

**ACCEPTANCE:** Your signature on the attached Purchase Order confirms your agreement to the terms above. This Purchase Order is not binding upon us unless it has been signed by Agency. No limitation on use will be effective unless initiated by both parties. Notwithstanding the foregoing, if delivery is made prior to Supplier's signing of this Purchase Order, Supplier's delivery of the Materials will constitute Supplier's unqualified acceptance of all the terms of this Purchase Order.

**PROPERTY:** Any and all property of Agency or Client, in possession or control of Supplier, shall be and remains the property of Agency or Client and Supplier shall be responsible for any loss or damage occurring to such property while such is in Supplier's possession or control.

**ADDITIONAL TERMS:** The terms and conditions set forth herein constitute the entire agreement between the parties with respect to the Materials to be performed pursuant to this Purchase Order and said terms and conditions cannot be modified or amended, except by an agreement in writing, signed by Agency's authorized representative. Notwithstanding the payment thereof, invoices or other similar documents originating with you or your agents shall not satisfy the requirements of the preceding sentence. No waiver by Agency shall be valid unless in writing and signed by Agency. All vendors that you hire will bill you directly (as opposed to Agency), with the exception of talent. This Purchase Order or any sums payable hereunder may not be assigned by Supplier without the prior written consent of Agency. This Purchase Order shall be construed pursuant to the laws of the State of Washington regardless of its conflict of laws provisions. The parties hereto agree that the state and federal courts sitting in the State of Washington shall be the exclusive forum and situs for the resolution of any and all disputes, controversies or matters arising herefrom or related hereto.