

TERMS AND CONDITIONS

These Terms and Conditions shall govern the services provided by the Supplier and/or the goods purchased by Vail as set forth in the Purchase Order issued by Vail to Supplier. Supplier's acceptance of a Purchase Order from Vail, and the sale contemplated thereby, shall be governed by the terms and conditions of the master agreement between Vail and Supplier. If no master agreement exists between Vail and Supplier, the Purchase Order shall be governed solely by these Terms and Conditions.

DEFINITIONS; APPLICATION:

"Purchase Order" means a document issued for purchase of products or services including, without limitation, a purchase order, statement of work, proposal and any exhibits, appendices or attachments thereto.

"Vail" means The Vail Corporation, and/or any of its subsidiaries or affiliates, which have issued the Purchase Order.

"Supplier" means the entity to which Vail issues a Purchase Order.

"Deliverables" means the products and/or services purchased pursuant to a Purchase Order.

"Terms and Conditions" means these terms and conditions, which shall govern the relationship between Vail and Supplier.

1. PURCHASE ORDER PRICE; ACCEPTANCE; MODIFICATION:

All prices quoted to Vail prior to the issuance of a Purchase Order shall remain firm for a period of sixty (60) days after such quotation. Vail shall pay Supplier the prices, fees and/or expenses set forth on the Purchase Order. Such prices, fees and/or expenses shall include (a) all applicable sales, use and other taxes and (b) all charges for Supplier's packing and crating, and for transportation to the FOB destination stated in the Purchase Order.

Modification. Vail may delay the scheduled date for delivery, performance, customization or assembly of any or all orders without penalty. All other modifications or amendments to the Purchase Order must be agreed to in writing by both parties.

Invoices and Payment. Payment shall be made by Vail in U.S. dollars within 30 days from the date of Supplier's invoice. Each invoice will contain an itemized description of the Deliverables and all applicable charges. Vail will be liable only for undisputed and correct charges on the invoice for Deliverables to which the charges relate.

Dispute. Vail will notify Supplier of any dispute with respect to an invoice in writing within 30 days of receipt of the invoice. Each party will use commercially reasonable efforts to resolve any payment dispute within 90 days of notice of the dispute.

Offset. Vail may deduct or offset any amount due or to become due to Supplier against any claim Vail has against Supplier, including claims not relating to the Purchase Order.

Overpayment and Credits. Supplier will return overpayments to Vail within 15 days after receipt. Credits not taken by Vail within 90 days will be remitted by check or electronic-funds transfer ("EFT") to the remittance address on the Vail Purchase Order.

Acceptance of Purchase Order. Shipment of goods and/or the performance of services by Supplier shall be deemed an acceptance of Vail's Purchase Order.

Acceptance of Deliverables. Upon receipt of the Deliverables, Vail will inspect the Deliverables. In the event Vail finds the Deliverables to be unacceptable in any manner, it will notify Supplier and Supplier will, at its expense, repair, re-perform, or replace the Deliverables, as applicable, within 15 days after receipt of Vail's notice. The foregoing procedure will be repeated until Vail accepts or finally rejects the Deliverables in its sole discretion. If Vail accepts any Deliverables that contain a defect or non-conformity not apparent on examination, Vail reserves the right to revoke acceptance. If Vail finally rejects or revokes acceptance, Supplier will refund to Vail all amounts paid by Vail for such Deliverables.

2. CONFIDENTIALITY:

With respect to these Terms and Conditions and any information supplied in connection with the Purchase Order and designated by the disclosing party as confidential, the recipient of such information shall (i) protect the confidential information with the same degree of care it uses to protect its own confidential information; provided, that such care shall be no less than a reasonable degree of care; and/or (ii) use and/or reproduce the confidential information solely in connection with its obligations pursuant to the Purchase Order and/or these Terms and Conditions. These confidentiality provisions shall not apply to information which the recipient can prove, through reasonable and compelling evidence (a) is or becomes publicly known or available through no breach of any duty of confidentiality by recipient; (b) was previously known to the recipient at the time of disclosure, without a duty of confidentiality; (c) is or was obtained by the recipient from a third party without a duty of confidentiality to the discloser; (d) was or is independently developed by the recipient without use of, or reference to, the confidential information; or (e) is disclosed pursuant to court order or other legal requirement; provided, however, that the recipient provide written notice to the discloser promptly upon learning of such order or requirement, so as to afford the discloser the opportunity to oppose such order or requirement. The recipient shall promptly return all confidential information upon the discloser's request; provided, however, that the recipient shall be entitled to retain one copy of the disclosing party's confidential information, solely for the purposes of monitoring its obligations hereunder.

3. OWNERSHIP AND USE OF DELIVERABLES:

Vail may, at its discretion, use, copy, distribute and modify any Deliverables delivered pursuant to the Purchase Order. Vail shall retain all right, title and interest in and to the Deliverables, including without limitation, patent, copyright, trademark and other intellectual property rights therein and all ideas, know-how, concepts, trade secrets embodied in the Deliverables.

4. INDEMNIFICATION:

The Supplier shall indemnify, defend and hold harmless Vail (including its officers, directors,

employees and agents) and its affiliates and customers against any loss, cost, expense, or liability (including without limitation reasonable attorneys' fees and costs) arising from the breach of these Terms and Conditions or negligence of Supplier (including its affiliates, agents, employees and others under its direction or control).

5. LIMITATION OF LIABILITY:

Except for Supplier's indemnification obligations and each party's breach of any confidentiality obligations, neither party shall be liable to the other for consequential, incidental, indirect, punitive or special damages, including without limitation commercial loss and lost profits, however caused and regardless of legal theory or foreseeability, directly or indirectly arising in connection with the Purchase Order, even if such party has been advised of the possibility of such damages. Notwithstanding the foregoing, there shall be no limitation on Supplier's liability to Vail for claims that ordinarily would be covered by any insurance required by Vail that Supplier maintain pursuant to these Terms and Conditions.

6. INSURANCE:

(a) Supplier warrants that at all times it is providing goods and/or services to Vail pursuant to these Terms and Conditions, Supplier shall carry and maintain, in full force and effect at its sole cost and expense, the following insurance policies with insurance companies rated at least 'A-' by A.M. Best and on forms satisfactory to Vail:

(i) Commercial General Liability insurance coverage in the amount of \$2,000,000 per occurrence and \$4,000,000 in the aggregate, including coverage for the following: contractual liability, personal injury, broad form property damage, independent contractors, premises operations, and products/completed operations;

(ii) Workers' Compensation Insurance in accordance with the provisions of the Workers' Compensation Act (the "Act") for the state in which Supplier has employees performing pursuant to the Purchase Order and/or these Terms and Conditions. Supplier understands that Vail requires sole proprietors who are excluded under the Act to carry Workers' Compensation insurance.

(iii) Professional Liability insurance covering claims arising out of the acts, errors or omissions of Supplier in relation to the goods and services provided pursuant to the Purchase Order and/or these Terms and Conditions in an amount of \$1,000,000 to include prior acts coverage under a claims-made policy. Supplier's coverage under this subsection shall extend for a period of three (3) years after the completion of the goods and/or services which are the subject of the Purchase Order and/or these Terms and Conditions.

(iv) Comprehensive Vehicle Liability insurance on all vehicles used in connection with the performance of goods and/or services pursuant to the Purchase Order and/or these Terms and Conditions in an amount of \$1,000,000 combined single limits for bodily injury and property damage, per occurrence.

(b) Upon request by Vail, Supplier shall provide Vail with certificates of insurance evidencing the policies listed above. Except in the case of Workers' Compensation insurance, Supplier shall cause The Vail Corporation to be named as additional insured as its interests may appear on these policies.

(c) All policies referenced in this section shall contain provisions to the effect that in the event of payment of any loss or damage, the insurers will have no rights of recovery against any of the insureds or any additional insureds thereunder.

7. DELIVERIES AND SHIPPING:

(a) Goods delivered pursuant to these Terms and Conditions shall be delivered FOB Vail's location as stated in the Purchase Order. Title and risk of loss shall pass to Vail upon receipt of the goods at Vail's location as set forth on the Purchase Order.

(b) Supplier understands and acknowledges that time is of the essence with respect to the delivery of goods and/or services pursuant to these Terms and Conditions.

8. WARRANTIES:

Supplier warrants that any services performed in accordance with the Purchase Order shall be in accordance with the highest standards of the industry and that all goods will conform to the specifications of Vail or the manufacturer, as applicable. In the event goods and/or services fail to meet this warranty, Supplier shall (i) re-perform the services; and/or (ii) repair or replace nonconforming goods at no cost to Vail.

Supplier warrants that all custom products will conform to Vail's specifications. No other warranty, whether express or implied, is provided by Supplier. Supplier's liability under this warranty shall extend for a period of one (1) year from either the date of shipment of the goods or the performance of the services.

THE WARRANTIES EXPRESSED HEREIN ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY STATUTE, OPERATION OF LAW, OR OTHERWISE, SPECIFICALLY INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

9. DELAY; TERMINATION; CANCELLATION:

In the event that Vail desires to cancel a Purchase Order or delay production or delivery of the goods or services, it shall give notice prior to shipment to Supplier. In the event of cancellation by Vail, Vail agrees to pay Supplier for all (i) approved services rendered by Supplier; and (ii) all finished goods shipped to Vail prior to the effective date of cancellation. Vail shall have no other liability arising out of termination of the Purchase Order.

Bankruptcy and Insolvency. The Purchase Order will terminate, without notice, (i) on the institution by or against the Supplier of insolvency, receivership or bankruptcy proceedings, (ii) on Supplier's making an assignment for the benefit of creditors, or (iii) on Supplier's insolvency or ceasing to do business. In the event of such termination, Vail shall have no liability to Supplier in connection with the terminated Purchase Order.

Breach. Vail may terminate the Purchase Order, in whole or in part, by written notice to Supplier if Supplier breaches these Terms and Conditions and/or the Purchase Order and fails to cure such breach to Vail's satisfaction within 30 days of Vail's written notice specifying the breach.

Transition. In the event of termination of the Purchase Order, in whole or in part, Supplier will promptly (i) document in detail the status of any orders in progress, (ii) provide all assistance reasonably requested by Vail in connection with the transition of services to Vail and/or its agents, and (iii) promptly refund or credit, at Vail's option, any amounts pre-paid to Supplier in connection with the Purchase Order.

Pre-Termination Obligations. Expiration or termination of the Purchase Order will not relieve either party from its obligations arising therefrom prior to such expiration or termination.

10. GENERAL:

Except as otherwise provided herein to the contrary, these Terms and Conditions shall not be modified or amended unless by a writing duly signed and executed by the parties hereto. No waiver of any of the provisions of these Terms and Conditions shall be effective unless in writing and signed by the party so waiving such provision.

These Terms and Conditions shall not be assigned by Supplier without the express written consent of Vail. The terms, covenants and conditions hereof shall fully and completely bind the heirs, executors, administrators, legal representatives, successors, and permitted assigns of the parties hereto as if they had been specifically mentioned in each of said terms, covenants and conditions. All agreements arising pursuant to the Purchase Order and these Terms and Conditions shall be governed by the laws of the State of Colorado, without regard to its conflict of laws provisions.