

## PURCHASE ORDER TERMS AND CONDITIONS

These T&Cs govern the services provided by the Supplier and/or the goods purchased by Vail as set forth in the PO issued by Vail to Supplier. Supplier's acceptance of a PO from Vail, and the sale contemplated thereby, will be governed by the terms and conditions of the master agreement between Vail and Supplier. If no master agreement exists, the PO will be governed solely by these T&Cs.

### DEFINITIONS; APPLICATION:

"**PO**" means a document issued for the purchase of products or services including a purchase order, statement of work, proposal and any related exhibits, appendices or attachments.

"**Vail**" means The Vail Corporation, and/or any of its affiliates issuing the PO.

"**Supplier**" means the entity to which Vail issues a PO.

"**Deliverables**" means the products and/or services purchased pursuant to a PO.

"**T&Cs**" means these terms and conditions, which govern the relationship between Vail and Supplier.

### 1. PURCHASE ORDER PRICE; ACCEPTANCE; MODIFICATION:

**Prices.** Vail will pay Supplier the prices, fees and/or expenses set forth in the PO which shall not be subject to increase. The prices, fees and/or expenses include all applicable sales, use and other taxes.

**Acceptance.** The PO incorporating these T&Cs becomes a contract when (1) an acknowledgement is received by Vail or (2) upon delivery of all or any portion of the goods or services. Any other terms or documents, including the Supplier's proposal or quote, terms and conditions found in inquiries, shrink wrap and package licenses (and the like), bills of lading, receipts or acceptance documents shall be null and void. If the PO pertains to the procurement of any software product, Supplier and Vail agree that the terms of any associated "shrink-wrap", "click-wrap" or other "electronic" license agreement shall not apply and are hereby expressly excluded to the extent any terms therein conflict or contradict these T&Cs, or any fully executed written License Agreement governing such software.

**Modification.** Vail may delay the scheduled date for delivery, performance, customization or assembly of any order without penalty. All other modifications to the PO must be agreed to in writing by both Vail and Supplier.

**Invoices.** Supplier will submit invoices to Vail in accordance with Vail's [Supplier Invoicing Policy], located at <https://www.vailresorts.com/procurement/>.

**Payment.** Vail will pay Supplier's invoice within sixty (60) days of the date of the receipt of such invoice; provided that if Vail pays such invoice within twenty (20) days of the receipt of such invoice, Vail will be entitled to reduce such invoice payment by two percent (2%). Payment will be made by electronic funds transfer ("EFT") or ACH to the bank account provided to Vail by Supplier. 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. Vail will not be responsible for paying any late fees or interest penalties. To the extent any invoice is incorrect, Vail may reject such invoice and request a corrected invoice, and the time periods contemplated by this Section will be based upon the date of receipt of such corrected invoice.

**Dispute.** Vail will use its reasonable efforts to notify Supplier in writing regarding any dispute with respect to an invoice within 30 days of receipt of the invoice. Vail and Supplier 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 to Supplier against any claim Vail has against Supplier, including claims not relating to the PO.

**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 EFT to the remittance address on the Vail PO and must include reference of the original invoice and/or PO that the credit applies to.

**Inspection and Rejection.** All goods and services not in compliance with the specifications hereof, or delivered or performed contrary to instructions, or in excess of the quantities herein provided, or substituted for subject matter described, or allegedly violating any statute, ordinance, or administrative order, rule or regulation, may be rejected by Vail and returned or held at Supplier's expense and risk. Vail may charge to Supplier all expense of inspecting, unpacking, examining, repacking, storing, de installing and reshipping any goods rejected as aforesaid. The remedies hereinabove afforded to Vail shall not be exclusive, and Vail may hold Supplier liable for any and all damages arising from any breach or default hereinabove set forth.

### 2. PUBLICITY:

Supplier may not issue a press release or make any public statements concerning this Agreement or its subject matter nor shall Supplier allow Vail's name or logo to be used as an endorsement of any goods or service offered by supplier without the prior written approval of Vail's VP of Communications.

### 3. OWNERSHIP AND USE OF DELIVERABLES:

Vail may, at its discretion, use, reuse, copy, distribute and modify any Deliverables delivered pursuant to the PO. Vail retains all right, title and interest in and to the Deliverables, including patent, copyright, trademark and other intellectual property rights and all ideas, know-how, concepts and trade secrets embodied in the Deliverables.

### 4. INDEMNIFICATION:

To the fullest extent permitted by law, Supplier will indemnify, defend and hold harmless Vail, its employees, officers, directors, owners, affiliates, agents and assignees and each of their successors-in-interest (each, an "**Indemnified Party**") from any injury, loss, liability, cost or expense, including reasonable attorney's fees, incurred in connection with or in any way arising from (i) the goods or services provided by Supplier or (ii) any breach by Supplier of any of its warranties, representations or obligations under a PO, provided however that Supplier shall have no obligation to indemnify, defend and hold harmless an Indemnified Party for claims arising solely out of the gross negligence or willful misconduct of an Indemnified Party. This Section survives any termination or expiration of the Purchase Order.

### 5. LIMITATION OF LIABILITY:

Except for Supplier's indemnification obligations and each party's breach of its confidentiality obligations, neither party will be liable to the other for consequential, incidental, indirect, punitive or special damages, including commercial loss and lost profits, however caused and regardless of legal theory or foreseeability, directly or indirectly arising in connection with the PO, even if a party has been advised of the possibility of damages. Notwithstanding the foregoing, there will be no limitation on Supplier's liability to Vail for claims that ordinarily would be covered by Supplier's insurance required by Vail pursuant to these T&Cs.

### 6. INSURANCE:

(a) Supplier must carry and maintain, at its sole cost, the following insurance policies with insurance companies and on forms satisfactory to Vail: (i) Commercial General Liability insurance with limits of \$2,000,000 per occurrence and \$4,000,000 USD in the aggregate; (ii) If Supplier's scope of work requires use of an auto, Commercial Auto Liability insurance with a limit of \$2,000,000 USD combined single limit each accident; (iii) Workers' Compensation insurance

as required by applicable law and Employers Liability insurance with a limit of \$500,000 USD each accident.

(b) Supplier's insurance required by subsections (i) and (ii) must be primary and non-contributory to any insurance held by Vail. Except for Workers' Compensation, Vail must be named as an additional insured under the policies. The policies must include a (i) waiver of subrogation; and (ii) provision requiring a minimum of 30 days' notice to Vail of any change or cancellation. Supplier must provide Vail with certificates of insurance evidencing the policies listed above upon receipt of a PO.

### 7. DELIVERIES:

(a) Goods delivered pursuant to these T&Cs will be delivered FOB Vail's location as stated in the PO. Title and risk of loss will pass to Vail upon receipt of the goods at Vail's location as stated on the PO.

(b) Time is of the essence for all POs. All orders made under a PO are based on the understanding that goods and services will be delivered to and/or performed by the dates specified on the PO. If deliverables are not supplied at the time agreed upon, Vail reserves the right to cancel or to purchase elsewhere and hold the Seller accountable for any and all damages and costs.

### 8. WARRANTIES:

Supplier warrants that any services performed in accordance with the PO will be in accordance with the highest standards of Supplier's industry and that all goods will be fit for the purpose intended, free from defects in material or workmanship, and will strictly conform to applicable laws and the specifications of Vail or the manufacturer, as applicable. Supplier also warrants it possesses all required licenses and permits applicable to the provision of the Deliverables. If the Deliverables fail to meet this warranty, Supplier shall at Vail's option repair, replace, or re-perform any part of the goods or services, furnished hereunder which are found to be defective within 12 months from the date of acceptance or performance, as applicable. The cost of repair, replacement, or re-performance, including all labor and parts, shall be borne solely by Supplier. This warranty shall survive any inspection, delivery, acceptance of or payment by Vail for the materials or services.

### 9. DELAY; TERMINATION; CANCELLATION:

**Delay and Cancellation.** Vail reserves the right at any time without cause to delay, terminate or cancel all or part of any undelivered or unperformed portion of a PO by notice to Supplier. Upon receipt of such notice, Supplier shall immediately stop delivery or work on the portion of the order terminated or canceled. If Vail cancels a PO, 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 will have no other liability arising out of cancellation of the PO.

**Bankruptcy and Insolvency.** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Supplier, the inability of Supplier to meet its debts as they become due, or in the event of the appointment, with or without Supplier's consent, of an assignee for the benefit of creditors or of a receiver, then Vail shall be entitled, at its sole option, to cancel any unfulfilled part of a PO without any liability whatsoever.

**Breach.** Vail may terminate the PO, in whole or in part, by written notice to Supplier if Supplier breaches its obligations under these T&Cs or the PO and fails to cure the breach to Vail's satisfaction within 30 days of Vail's written notice specifying the breach.

**Transition.** If the PO is terminated, 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 or its agents, and (iii) refund or credit, at Vail's option, any amounts pre-paid to Supplier in connection with the PO.

### 10. INTELLECTUAL PROPERTY

**Supplier IP.** Vail acknowledges that Supplier owns holds or may independently develop in the future proprietary information and technology ("Supplier IP"). Vail agrees that any Supplier IP is proprietary to Supplier and will remain Supplier's exclusive property. To the extent that any Supplier IP is embodied in a Deliverable, Supplier grants Vail a perpetual, irrevocable, royalty-free, non-exclusive, transferable license to perform, display, use, reproduce, modify and adapt that Supplier IP. Except for the rights granted to Vail in this Agreement, Supplier reserves all right, title and interest to the Supplier IP.

**Developed IP.** Supplier must promptly and fully disclose to Vail all inventions and works of authorship, or any other intellectual property conceived, developed, originated, fixed or reduced to practice by Supplier in connection with any goods developed or services performed by Supplier for Vail, whether or not embodied in a Deliverable (the "Work Product"). Supplier agrees to assign to Vail without further consideration, the entire right, title and interest in and to the Work Product, whether or not patentable or copyrightable. Supplier agrees that Vail owns all copyright, trademark, trade secret, patent and other intellectual property rights associated with the Work Product. Supplier will execute and will cause its staff to execute, all applications for patents and copyrights, whether domestic or foreign, assignments and other papers necessary to secure and enforce all rights related to the Work Product.

### 11. ADDITIONAL TERMS

These T&Cs are in addition to all other terms and conditions contained in the PO including but not limited to terms concerning: nondiscrimination, conflicting terms and conditions, governing law, and dispute resolution.

### 12. GENERAL:

Supplier shall at all times be an independent contractor in providing the Deliverables under a PO, and shall furnish all supervision and direction required to provide the Deliverables. Under no circumstance shall Supplier or its personnel be considered an employee or agent of Vail. No waiver or modification of any provision of these T&Cs will be effective unless in writing and signed by both Vail and Supplier. These T&Cs may not be assigned by Supplier without the written consent of Vail. These T&Cs are binding on the successors and permitted assigns of either party. The United Nations Convention on the International Sale of Goods shall not apply. Neither party will be deemed to be in default for any delay or failure to perform any of its obligations under this Agreement to the extent that the delay or failure to perform results directly from an occurrence that is not reasonably foreseeable, caused by, or under the control of, the performing party, and occurs despite reasonable efforts to prevent, avoid, delay or mitigate the effect of that occurrence, including (i) acts of God, fire, flood, explosion or extraordinary and destructive weather conditions directly affecting the performing party; (ii) injunctions; (iii) restraint or acts of domestic government; or (iv) terrorism, war, sabotage, vandalism, accident, civil disorder or riots occurring within the United States or Canada or directly affecting the performing party. Notwithstanding the foregoing, neither party will be liable for any failure to perform under this Agreement in the event that Vail or any of its facilities is closed based on concerns related to COVID-19 or any other public health emergency.