

VANTIVE PURCHASE ORDER TERMS AND CONDITIONS
(Spain Purchase Order Terms and Conditions for Suppliers)

- 1. AGREEMENT:** This order is Buyer's offer to Seller and becomes a binding contract, subject to the terms hereof, when accepted by acknowledgement or commencement of performance by Seller. Buyer objects to all additions, exceptions, or changes to these terms, whether contained in any printed form of Seller or elsewhere, unless approved by Buyer in writing. To the extent there are any inconsistencies between these terms and those written on the face of this order, the latter will control.
- 2. PRICE:** Unless otherwise specified, the prices stated on the front of this order include all charges for packing, hauling, storage, transportation to point of delivery, and taxes. Sales and use taxes not subject to exemption shall be stated separately in Seller's invoice. Seller warrants that the prices quoted in this order are no greater than those currently charged any other buyer for similar quantities of goods or services. Any price reduction extended to others by Seller prior to delivery shall also be extended to Buyer.
- 3. PAYMENT TERMS:** Buyer will make undisputed payments for goods and services that meet all applicable requirements within sixty (60) days after receipt of the goods or completion of performance of the services identified in this order. Buyer may withhold payment of any amounts that it disputes in good faith. Payment of an invoice shall not constitute acceptance of any Products, and the invoice will be adjusted for any errors, shortages and defects. Any billing dispute will not be cause for Seller's non-delivery of Goods or non-performance of Services. Buyer shall have the right to update its payment terms upon notice to Seller in the event Buyer makes such change at a corporate level.
- 4. REIMBURSEMENT OF EXPENSES:** Any reimbursement of Seller's expenses must be agreed upon in advance in writing by Buyer.
- 5. CHANGES:** Buyer may at any time make changes in the scope or quantity of the goods or services covered by this order, in which event an adjustment will be made to any price, time of performance, and other provisions of this order if appropriate. Claims for such an adjustment must be made within fifteen (15) days from the date of receipt by Seller of notice of the change. Substitutions or changes in quantities or specifications by Seller shall not be made without Buyer's prior written approval.
- 6. WARRANTY:** Seller covenants, represents and warrants that:
 - a) The goods or services ordered shall be merchantable; shall conform to this order, to specifications, drawings ,and other descriptions referenced in this order, and to any accepted samples; shall be free from defects in materials and workmanship; shall be free from defects in design unless the design was supplied by Buyer; and shall be fit and safe for the intended purposes. Seller warrants that it has clear title to the goods and that the goods and services shall be delivered free of liens or encumbrances;
 - b) The goods covered by this order shall comply with all applicable laws and regulations or other legal requirements concerning the manufacture, packaging and delivery of the goods;
 - c) It will perform all services covered by this order in a competent, professional and workmanlike manner and in compliance with all applicable laws, and it has the required qualifications and expertise to perform;
 - d) It will perform its obligations in accordance with Buyer instructions and guidelines (and any future modifications thereto), including those related to data privacy and information security, and with reasonable skill, care and diligence and in accordance with generally accepted customary business practice;
 - e) It shall comply with all applicable laws and regulations including to those relating to anti-bribery and anti-corruption and including without limitation all applicable wage, hour, equal opportunity, immigration, record-keeping and other employment requirements. Neither it, nor any of its employees, or authorized subcontractors have: a) been listed by any federal or state agency as excluded, debarred, suspended, or otherwise ineligible to participate in federal and/or state

programs, including, but not limited to, exclusion, debarment, or suspension as noted by the List of Excluded Individuals/Entities (“LEIE”) issued by the Office of Inspector General of the Department of Health and Human Services Office (“OIG”), the U.S. General Services Administration (“GSA”) and/or the Food and Drug Administration (“FDA”); b) been convicted of any crime relating to any federal and/or state program; or c) been included on the Specially Designated Nationals list (“SDN List”) maintained by the U.S. Department of Treasury’s Office of Foreign Assets Control or any other similar list, domestic or foreign;

- f) It shall comply, with applicable export control and sanctions legislation. Applicable legislation includes, but is not limited to, certain rules and policies that have been issued by the United States’ and European Union’s authorities or those of the country whose laws govern this order or in which this order is performed which strictly control the export, re-export, service, support and other activities with certain countries.
- g) No officer, director, partner, owner, principal, employee or agent of Seller is an employee of a governmental agency or instrumentality is in a position to influence the actions or decisions regarding the activities of Seller contemplated by this order. Neither Seller nor any person employed by or representing it has made, offered, promised or authorized, or shall make an offer, promise or authorize, either directly or indirectly, any official representative or employee of any governmental agency or instrumentality, any political party or officer thereof, or any candidate for public office, for the purpose of influencing a decision by any of them to take actions favorable to Buyer or Seller on any matter related directly or indirectly to the subject of this order, securing an improper advantage for Buyer, obtaining or retaining business or a business advantage, or the improper performance of a public official function or activity;
- h) All these warranties and other warranties as may be prescribed by law shall extend to Buyer, its successors, assigns, and customers and to users of the goods or services and shall run through any expiration date stated on the goods, or, if no expiration date is stated, then for a period of one (1) year after delivery. Claims under these warranties must be made within the applicable period prescribed by statute.

7. INSPECTION; TESTING: Goods purchased under this order are subject to Buyer’s reasonable inspection, testing, and approval at Buyer’s destination. All services performed hereunder are subject to Buyer’s satisfaction and final approval.

If any of the goods or services are found to be defective in material or workmanship, non-conforming to the warranties made herein or not in conformity with the requirements of this agreement, then the Buyer shall be entitled: (i) to require the Seller to supply replacement goods or re-perform the services in accordance with this order as quickly as reasonably possible, or (ii) at the Buyer’s sole option and whether or not the Buyer has previously required the Seller to supply any replacement goods or re-perform the services, to reject and return such goods at Seller’s expense or to treat this order as terminated by Seller’s breach and require the repayment of any part of the price which had been paid.

Seller shall also reimburse Buyer for all documented and actually incurred costs and expenses incurred by Buyer as a result receiving non-conforming goods, including the cost of returning the non-conforming goods to the Seller, the costs, fees and penalties payable by Buyer to a customer, costs and expenses related to or arising from Buyer’s purchase of substitute goods or services, incremental training costs for substitute goods and costs to rework and redesign facilities to accommodate substitute goods or services, expedited shipping costs, recall and field correction costs, product re-testing costs and customer and regulatory authority notification costs and costs of destruction.

Payment for any goods or services under this order shall not be deemed acceptance of the goods or services.

8. RECALL: In the event that a recall of the goods is necessitated by a defect, a failure to conform to the specifications, applicable laws, or any other reason within the Seller’s control, Seller shall bear all costs and expenses of such recall, including without limitation, costs of notifying customers, customer refunds, costs of returning goods, lost profits, and other expenses incurred to meet obligations to third parties.

9. **SHIPMENTOR DELIVERY SCHEDULES**: Shipment or delivery of goods shall be in accordance with the schedule specified in this order. If Seller does not, or it appears that Seller will not, meet such schedule, Buyer may, in addition to any other rights or remedies provided by law or this order, require that Seller ship the goods via expedited routing to meet the schedule or to recover the time lost and Seller shall pay the difference in shipping costs. Seller shall reimburse Buyer for all documented and actually incurred costs and expenses incurred by Buyer as a result of late delivery of goods, including the costs, fees and penalties payable by Buyer to a customer. At any such time that Seller exceeds three (3) late deliveries in a thirty (30) day period, Buyer has the right to request a written action plan, normally in the form of a Supplier Corrective Action Plan (“SCAR”) from the Seller on how late deliveries are being resolved.
10. **OVERSHIPMENT**: Over-shipment of goods not approved by Buyer in writing will be returned, at Seller's expense, if such over-shipment exceeds 10% of the total order price or \$500.00, whichever is smaller.
11. **SUBSTITUTION, MODIFICATION**: No substitution or modification of any goods, component parts, tooling, sources of raw materials, processes, or manufacturing sites may be made without Buyer's prior written consent.
12. **INDEMNIFICATION**: Seller shall defend, indemnify and hold Buyer, its successors, assigns, employees, customers, and users of the goods or services harmless with respect to all claims, liability, damage, loss, and expenses, including attorney's fees, incurred relating to or caused by:
- a) Actual or alleged patent, copyright, or trademark infringement or violation of other proprietary right, arising out of or relating to any claim that the performance of services or use or sale of any good or good part furnished hereunder constitutes an infringement, misappropriation, or any other violation of any patent, trademark, trade dress, trade secret, copyright or other intellectual property right;
 - b) Actual or alleged defect in the services or in the design, manufacture, or shipment of the goods;
 - c) Actual or alleged breach of warranty;
 - d) Failure of Seller to deliver the goods or services on a timely basis; or
 - e) Failure of the goods or services to meet the requirements of any applicable law.

In the event of a claim under this paragraph, and in addition to any and all other rights and remedies available to it, Buyer may at its option terminate this order or defer acceptance of the balance of the goods or services ordered until the claim is resolved. If Buyer is enjoined from use of the goods, Seller shall at Buyer's option, either procure for Buyer the right to continue using the goods, replace the goods with substantially equivalent goods, modify the goods so as to be usable by Buyer, or repurchase the goods at the price set forth in this order. This Paragraph 12 shall not be construed to indemnify Buyer for any loss to the extent it is attributable to Buyer's design, specification, or negligence.

13. **INSURANCE**: Seller shall obtain insurance to cover any and all risks associated with the performance of its duties under this Agreement and all Purchase Orders.

Seller shall obtain and keep in force for three years after the last delivery under this order commercial general liability insurance covering each occurrence of bodily injury and property damage in the amount of not less than \$1 Million Dollars (or any other amount Buyer may indicate in this order) combined single limit with special endorsements providing coverage for:

- a) Products and Completed Operations Liability;
- b) Blanket Broad Form Vendor's Liability;
- c) Blanket Contractual Liability;
- d) Manufacturer's Errors and Omissions; and
- e) Product Recall/Testing/Replacement Coverage.

If services are performed under this order on Buyer's premises, Seller shall also obtain Premises-Operations, Personal Injury, and Independent Contractors Protective Liability endorsements, and shall further obtain Workers' Compensation, Employer's Liability and Automobile Liability Insurance coverage in amounts acceptable to Buyer, and if Seller will have access to Buyer property, computer systems and/or data, Third Party Fidelity/Crime Coverage. If requested, Seller shall furnish Buyer with a certificate evidencing the required insurance.

14. **RISK OF LOSS**: Seller shall bear the risk of loss or damage to the goods covered by this order until they are delivered to and accepted by Buyer.
15. **LIMITATION OF LIABILITY**: BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY LOSS OF PROFIT (LUCRO CESANTE) NOR FOR ANY LOSS OR DAMAGE ARISING FROM LOSS, DAMAGE OR CORRUPTION OF ANY DATA.
16. **AUDIT**: To verify Seller's compliance with this order, Buyer and its representatives will have the right, at reasonable times and places and upon reasonable notice, to (a) inspect all facilities, resources and procedures employed by Seller in manufacturing or providing the goods and services; and (b) examine all books and records relating to the goods and services.
17. **BUYER-FURNISHED MATERIAL**: Seller shall not use, reproduce, or appropriate for or disclose to anyone other than Buyer, any material, tooling, dies, drawings, designs, or other property or information furnished by Buyer ("Material") without Buyer's prior written approval. Title to all Material shall remain in Buyer at all times, and where practicable the Material shall be clearly marked or tagged to indicate this ownership. Seller shall bear the risk of loss or damage to the Material until it is returned to Buyer. All Material, whether or not spoiled or used, shall be returned to Buyer at termination or completion of this order unless Buyer shall otherwise direct.
18. **REFERENCES TO BUYER**: Seller shall not present nor publish, nor submit for publication, any work specifically resulting in relation to goods or services supplied solely for Buyer or that identifies or may identify Buyer without Buyer's prior written approval. Seller shall not use Buyer's name in any advertising, articles, press release, social media, promotional materials or website advertising, or disclose to any third party the terms of this order or the fact that Seller is supplying goods or services to Buyer, without Buyer's prior written consent (which is in its sole discretion to grant or withhold).
19. **USE OF SELLER'S INFORMATION**: All information disclosed to Buyer in connection with this order is furnished as part of the consideration for Buyer's placement of this order. This information is not to be treated as confidential or proprietary, and no claim will be asserted against Buyer, its assigns, or customers, for its disclosure or use.
20. **TERMINATION**:
 - a) Buyer may terminate this order, in whole or in part, without liability: If Buyer anticipated Seller's breach of this order and Seller does not provide adequate assurance of its performance within ten (10) days of Buyer's request; if deliveries are not made at the time or in the quantities specified; or in the event of a breach or failure by Seller to meet other terms of this order. This right shall be in addition to any other remedies provided Buyer by law.
 - b) Buyer may terminate this order, in whole or in part, at any time for its convenience by notice to Seller in writing. Seller's sole compensation for such termination shall be payment by Buyer of the percentage of the total order price corresponding to the proportion of work completed in filling the order prior to such notice, plus any reasonable expenses incurred by Seller in terminating orders and work in progress. Such termination claim must be submitted to Buyer within sixty (60) days of the date of termination and shall be subject to audit by Buyer.
 - c) Upon any termination under this paragraph, title to all equipment materials, work-in-progress, finished products, plans, drawings, specifications, information, special tooling, and any other items for which Seller may submit a claim shall vest in Buyer, and Seller shall promptly deliver these items to Buyer and take all necessary action to protect such property prior to such delivery.
21. **SETOFF**: Any counterclaim against Seller or any of its related entities by Buyer or any of its related entities which arise out of this or any other transaction may be set off against any money due seller under this order.
22. **ASSIGNMENT; SUBCONTRACTING**: Seller shall not assign this order without Buyer's prior written consent, which Buyer may withhold in its sole discretion, and any attempted assignment without Buyer's consent will be void. Any permitted assignee shall assume in writing all obligations of Seller under this order; provided, however, that Seller shall remain primarily liable for such obligations. Buyer may assign the order without the consent of Seller by providing notice. The order will be binding upon and inure to the benefit of the permitted assigns of each party.

23. WAIVER; SEVERABILITY: No waiver by Buyer of any breach of this order by Seller shall be considered as a waiver of any subsequent breach of the same or any other provision. No claim or right arising out of a breach of the terms and conditions of this order can be discharged in whole or in part by a waiver or renunciation of the claim or right unless such waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. If at any time any one or more of the provisions contained this order is or should become invalid, illegal or unenforceable in any respect under any law, rule, regulation or ruling, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

24. CONTROLLING LAW; VENUE: This order and the performance under it shall be controlled and governed by the law of Kingdom of Spain.

25. DISPUTE RESOLUTION: Any and all disputes, claims or controversies (“disputes”) arising out of or relating to this order, including without limitation, any dispute as to the existence, validity, performance, breach or termination of this order, shall be resolved in the following manner set forth in this Section 25.

- (a) A party must first send written notice of the dispute to the other party for attempted resolution by negotiation between executives of each party who have authority to settle the controversy. Such negotiations must be conducted within 14 days (all references to “days” in this provision are to calendar days) after such notice is received (the “Negotiation Period”). If the parties fail to meet or if the matter has not been resolved within such Negotiation Period, the parties shall mediate their dispute within 30 days after such Negotiation Period has expired. If the mediation fails to resolve all outstanding disputes between the parties or if the mediation has not been scheduled within 30 days of the end of the applicable Negotiation Period, either party may initiate arbitration with respect to the matters submitted to negotiation and mediation by filing a written demand for arbitration. Such disputes shall be settled by final and binding arbitration administered by the International Institute for Conflict Prevention & Resolution in accordance with its arbitration rules (“Rules”). The place of arbitration shall be the Kingdom of Spain. Notwithstanding the foregoing, to the extent a party is seeking injunctive relief either party may immediately bring a proceeding seeking preliminary injunctive relief in a court having jurisdiction over such matter, and this relief shall remain in effect until the parties reach a resolution or so long as the arbitrator(s) feel as appropriate.
- (b) For disputes under \$10,000,000, one arbitrator shall either be mutually agreed by the parties or appointed in accordance with the Rules. For disputes over \$10,000,000, a panel of three arbitrators shall be appointed in accordance with the Rules. Within 30 days following the initiation of an arbitration proceeding, the arbitrator(s) will be selected. No later than 60 days after selection, the arbitrator(s) shall hold a hearing to resolve each of the issues identified by the parties. All arbitration proceedings shall be conducted in the English language. At least 7 days prior to the hearing, each party shall submit the following to the other party and the arbitrator(s):
 - (i) A copy of all exhibits on which such party intends to rely in any oral or written presentation to the arbitrator(s);
 - (ii) A list of any witnesses such party intends to call at the hearing, and a short summary of the anticipated testimony of each witness;
 - (iii) A proposed ruling on each issue to be resolved, together with a request for a specific damage award or other remedy for each issue. The proposed rulings and remedies shall not contain any recitation of the facts or of any legal arguments. The parties agree that neither side shall seek as part of its remedy any punitive damages; and
 - (iv) A brief in support of such party’s proposed rulings and remedies, provided the brief shall not exceed 20 pages.
- (c) Within 14 days following completion of the hearing, each party may submit to the other party and the arbitrator(s) a post-hearing brief in support of its proposed rulings and remedies, provided that such brief shall not contain or discuss any new evidence and shall not exceed 10 pages. The arbitrator(s) shall rule on each disputed issue within 21 days following completion of the hearing. Such ruling shall adopt in its entirety the proposed ruling and remedy of one of the parties on each disputed issue and may adopt one party’s proposed rulings and remedies on some issues and the other party’s proposed rulings and remedies on other issues.

The arbitrator(s) shall not adopt any written opinion or otherwise explain the basis of the ruling. If the arbitrator(s) rule in favor of one party on all disputed issues, the losing party shall pay the prevailing party's fees and expenses (**including attorney's fees**). **If the arbitrator(s) rule in favor of one party on some issues and the other party on other issues**, the arbitrator(s) shall allocate fees and expenses in a way that bears a reasonable relationship to the ruling. The rulings of the arbitrator(s) and the allocation of fees and expenses shall be binding, non-reviewable and non-appealable, and may be entered as a final judgment in any court having jurisdiction. Except as required by law, the parties agree to keep confidential the existence of the arbitration, the submissions made by the parties (including exhibits, testimony, proposed rulings and briefs) and the decisions made by the arbitrator(s), including its awards.

26. REMEDIES NOT EXCLUSIVE: The rights and remedies of Buyer provided under these Terms and Conditions are cumulative and not exclusive and are in addition to any other rights and remedies provided at Law.

27. INDEPENDENT CONTRACTOR: The relationship of the parties is that of independent contractors. So Seller's **employees shall not be** considered, de facto or de iuris, employees of Buyer. The parties will not be deemed partners or joint ventures, nor will one party be deemed an agent or employee of the other party. Neither party has any express or implied right to assume or create any obligation on behalf of, or in the name of, the other party or to bind the other party to any contract, agreement or undertaking with any third party, and no conduct of a party shall be deemed to imply such right. The personnel employed by Seller in the rendering of the services under this order shall be the exclusive responsibility of Seller, who will provide all instructions. The parties undertake to observe all such obligations as correspond to each of them under the legislation in force from time to time on Safety and Hygiene at Work.

Seller declares that it fully complies with all legal and contractual requirements in respect to Labour, Social Security, Tax and the Prevention of Risks at Work, and it agrees to continue to comply with said obligations, assuming the legal responsibilities that may be required from time to time. During the term of this order, Seller shall be required to submit to Buyer, as per its request and at any time, a certificate attesting due payment of all relevant taxes and the Social Security, and the remaining employment obligations in respect to the personnel employed in the provision of the services.

28. NOTICES: Any notices required or permitted under this order will be in writing, will refer specifically to the order, and will be sent by recognized national or international overnight courier or registered or certified mail, postage prepaid, return receipt requested, or delivered by hand to the address set forth in this order. Notices under the order will be deemed to be duly given: (a) when delivered by hand; (b) two days after deposit with a recognized national or international courier; or (c) on the delivery date indicated in the return receipt for registered or certified mail. A party may change its contact information immediately upon written notice to the other party in accordance with this section.

29. AMENDMENT: Any modification to this order must be in writing and signed by an authorized representative of each party.

30. BUYER'S ETHICS & COMPLIANCE STANDARDS: Seller and employees of Seller will comply with the Buyer's Ethics & Compliance Standards for Suppliers, which can be found on the Buyer's website (vantive.com) and which may be amended by the Buyer from time to time, a copy of which Seller acknowledges having received, read, and understood.