

## **GENERAL TERMS & CONDITIONS OF THIS ORDER**

1. **AGREEMENT:** The terms of this Order ("Order") shall be deemed accepted by Supplier upon written acceptance hereof or upon shipment of the goods. For the purposes of this Order mass-market ("shrink-wrap") software shall be deemed "goods," and shall be treated as though subject to Chapter 2 of the Uniform Commercial Code. BANA objects to any different or additional terms in Supplier's acceptance of this Order, and they shall be deemed rejected unless expressly approved by BANA in writing. If a written agreement ("Agreement") exists between the parties regarding the goods or services covered by this Order, the terms and conditions in this Order shall be deemed part of the Agreement, provided that the terms of the main body of the Agreement Contract shall prevail over any inconsistent terms in this Order.

2. **PRICES AND SHIPMENT:** All prices shown in this Order are firm prices, exclusive of applicable taxes, and the shipping terms are F.O.B. Destination, Freight Prepaid and billed at cost. All transportation shall include inside delivery. No additional charges of any kind will be allowed unless specifically agreed to in writing in advance by BANA.

3. **OVERSHIPMENTS/SUBSTITUTIONS:** BANA will hold overshipments at Supplier's risk and expense for a reasonable time awaiting shipping instructions. Any unauthorized quantity is subject to rejection and return at Supplier's expense, provided that BANA may choose to accept the delivery (with appropriate invoice adjustment) if the quantity deviation does not exceed 5 %. There shall be no substitutions of like or similar goods without written authorization by an authorized representative of BANA.

4. **ACCEPTANCE:** Notwithstanding any prior inspection or payment, BANA may reject all goods not fully in compliance with Supplier's published standards and documentation and the specifications herein, or shipped contrary to instructions, in excess of the quantities herein called for or in violation of any statute, ordinance, rule or regulation, upon written notice rendered to Supplier within 30 days after BANA's receipt of the goods. BANA may return such rejected goods at Seller's risk and expense and receive a full refund of any payments made. Alternatively, at BANA's request, Supplier shall repair or replace the rejected goods, and BANA may thereafter conduct additional tests, followed by rejection or acceptance, pursuant to this paragraph.

5. **INVOICING:** Supplier must submit a separate invoice for each Order, prominently showing: Order number; BANA's form, model or merchandise code number; description; quantity; unit price; extended totals; tax; insurance; installation; training; transportation; and any other costs, charges or expenses associated with the goods covered by this Order. Invoices for transportation charges must be accompanied by a bill of lading or copy of the original freight bill. The manufacturer's serial number(s) must be listed on any invoice for equipment. Invoices will not be paid until BANA receives any required Material Safety Data Sheets ("MSDS"). BANA shall pay the amount due within 60 days from the date of receipt of an acceptable invoice, provided such invoice has not been sent prior to the date of shipment or actual acceptance of the goods, whichever is later, in which case the payment period commences on such later date.

6. **WARRANTY:** Supplier warrants that the goods covered by this Order shall comply with Supplier's published standards and documentation and the specifications in this Order or any Agreement governing this Order and shall be free from defects in design, material and workmanship and shall meet or exceed the standards required by all laws and regulations applicable to such goods where they are to be delivered. Supplier's liability shall not extend to consequential damages from the breach of any warranty, with the exception of the warranties expressly set forth herein. **NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.**

7. **WAIVER:** No delay, failure or waiver of BANA's exercise or partial exercise of any right or remedy hereunder shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy.

### **8. PROPRIETARY RIGHTS:**

(a) Supplier warrants that the sale, delivery or use of the goods, including mass-market software, shall not violate or infringe any trademark, patent, copyright, trade secret or other proprietary right ("Intellectual Property Right") of any third party. At its sole expense, Supplier shall defend, indemnify and save Bank harmless from any and all losses, damages, judgments, costs or expenses (including attorneys' fees) attributable to any claim, suit or proceeding alleging that the sale, possession or use of the goods by Bank infringes an Intellectual Property Right of any third party.

(b) Notwithstanding the foregoing, if Supplier is not the publisher of mass-market software or the manufacturer of goods delivered pursuant to this Order, Supplier hereby assigns to BANA all warranties and related remedy rights Supplier may have or obtain under its agreements with the publisher of the software or the manufacturer of the goods delivered.

9. **INDEMNIFICATION/LIABILITY LIMITATION:** (a) Supplier hereby indemnifies and holds BANA harmless from any claims or damages, including attorneys' fees, due to the injury or death of any person, or the loss or damage to real or personal property, resulting from the willful or negligent acts or omissions of Supplier, its agents or employees. (b) Neither party shall be liable to the other for any special, indirect or consequential damages, including, but not limited to, lost profits, even if the party allegedly liable had knowledge of the possibility of such damages, except as to claims arising under the indemnity provisions of this Order or the governing Agreement, if any.

10. **ADVERTISING:** Neither party shall use the name or logo of the other party in any public disclosure relating to this Order, including, without limitation, in media releases, promotional or marketing material or customer lists, other than in disclosures required by legal, accounting or regulatory requirements beyond the reasonable control of the using party. Such use without consent shall be a material breach of this Order and any governing Agreement.

11. **CONFIDENTIALITY:** Supplier will not quote for sale to others, without BANA's written authorization, any goods produced to Bank of America's specification or drawings. Supplier will treat all documentation, specifications, drawings, samples, artwork and other data furnished by Bank of America as confidential information whether or not so marked or identified ("Confidential Information") and handle and preserve it with the same degree of care that Supplier uses for its own confidential and proprietary information of a similar nature. All such Confidential Information will remain Bank of America's property, and, upon request, Supplier will return it to BANA in the condition in which Supplier received it or, with BANA's consent, certify its destruction. BANA shall deduct from Supplier's invoice time and materials to return artwork or collateral materials to their original condition upon completion of the order.

12. **ASSIGNMENT:** No right or obligation under this Order (including the right to receive monies due) may be assigned by Supplier without the prior written consent of BANA, and any purported assignment without such consent will be void.

13. **APPLICABLE LAW:** Unless the main body of any Agreement governing this Order provides otherwise, this Order shall be construed under and governed by the laws of the State of North Carolina, including, but not limited to, the Uniform Commercial Code. To the maximum extent permitted by the governing law, this Order and the transactions called for herein shall not be governed or affected by any version of the Uniform Computer Information Transactions Act (UCITA) enacted in any jurisdiction. The transactions called for here shall not be governed by the United Nations Convention on Contracts for the International Sales of Goods. "BANA" means Bank of America, N.A., which is authorized to purchase on behalf of its parent, subsidiaries or affiliates or its parent's subsidiaries or affiliates, all of which together are referred to in this Order as "Bank of America."

### **Executive Order 13496**

To the extent Executive Order 13496 applies to this Agreement or the work performed hereunder, the text of 29 CFR Part 471, Appendix A to Subpart A (as amended, modified, restated or supplemented from time to time) is hereby incorporated by reference into this Agreement as if set forth fully herein. Supplier shall comply with all requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, and all promulgated regulations applicable thereto (collectively, "EO 13496 Requirements"). At least annually, and on a more frequent basis as determined by Bank of America, Supplier shall certify in writing, in a form acceptable to Bank of America, that Supplier has fully complied with all EO 13496 Requirements. Failure to comply with the EO 13496 Requirements or the written certification requirements shall be deemed a material breach of this Agreement.

Supplier shall indemnify, defend, and hold harmless Bank of America and its Representatives, successors and permitted assigns from and against any and all claims or legal actions of whatever kind or nature that are made or threatened by any third party or government agency and all related losses, expenses, damages, costs and liabilities, including reasonable attorneys' fees and expenses incurred in investigation, defense or settlement, which arise out of, are alleged to arise out of, or relate to Supplier's failure to comply with the EO 13496 Requirements. Supplier's liability pursuant to this Subsection 13.9 shall not be subject to or limited in any way by the limitations set forth in Section 17.0, Limitation of Liability.

### **14. MEDIATION/ARBITRATION:**

(a) If the parties are unable to resolve a dispute arising out of or relating to this Order, the governing Agreement or any other agreements relating hereto, including a claim based on or arising from an alleged tort, through good faith negotiation, then such dispute shall be referred to nonbinding mediation before a mediator acceptable to both sides, provided, however, a dispute relating to infringement of Intellectual Property Rights or disclosure of Confidential Information shall not be subject to this paragraph. The parties shall share equally the expenses of such mediation.

(b) If mediation in accordance with paragraph (a) does not resolve a dispute, or the dispute is not eligible for mediation, it shall be determined by arbitration at the request of either party. The arbitration shall be conducted by one independent arbitrator who shall be an attorney or retired judge. The arbitration shall be held in Charlotte, N.C., in accordance with the United States Arbitration Act (Title 9, U. S. Code), notwithstanding any choice of law provision in this Order or any Agreement governing this Order, and under the auspices and the Rules of Practice and Procedure for the Arbitration of Commercial Disputes of the Judicial Arbitration and Mediation Service, Inc./Endispute, Inc. ("JAMS/Endispute") then in effect. If JAMS/ Endispute is unable or legally precluded from administering the arbitration, then it shall be conducted under the auspices and Commercial Arbitration Rules of the American Arbitration Association. The Section of this Agreement entitled "Confidentiality" shall apply to the arbitration proceeding, all evidence taken, and the decision or order issued by the arbitrator, which shall be Confidential Information of both parties. Judgment upon the decision rendered by the arbitrator may be entered in any court having jurisdiction.

(c) No provision of this Mediation/Arbitration section shall limit the right of a party to obtain provisional or ancillary remedies from a court of competent jurisdiction before, after or during the pendency of any arbitration. The exercise of a remedy does not waive the right of either party to resort to arbitration.

15. **ATTORNEYS' FEES:** If either party commences legal or arbitral proceedings to resolve a dispute arising from or relating to this Order, the prevailing party, as determined by the court or arbitrator, shall be entitled to recover, from the other party, the costs and expenses it actually incurs arising from or relating to such proceedings, including but not limited to, reasonable attorneys' fees, expenses and costs of investigation and litigation/arbitration.

16. **EEO/AA CERTIFICATION:** When applicable, Supplier, during the fulfillment of this Order, agrees to comply with the provisions of applicable laws and regulations governing equal employment opportunity and affirmative action. These include the Equal Opportunity Clause of Executive Order 11246, as set forth at 41 CFR 60-1.4; and the Affirmative Action Clauses of Section 503 of the Rehabilitation Act of 1973, as set forth at 41 CFR 60-741.4, and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 U.S.C. 4212), as set forth at 41 CFR 60-250.4.