

PRODUCT PURCHASE ORDER STANDARD TERMS AND CONDITIONS

These Standard Purchase Order Terms and Conditions shall apply to each and every company ("Supplier") distributing services, goods or products ("Products") through, or selling Products to, Corporate Express, Inc. and its subsidiaries and affiliates ("CE").

1. CE will accept proposals for cost increases no more often than once per calendar year, effective January 1 of the following year. Price increase requests must be provided to CE a minimum of 120 days notice (with the exception of paper, paper products and toner, for which price increases will be accepted quarterly) prior to each January 1st and all price increase proposals must be supported with written justification of cost increases incurred by Supplier for such Products. Any proposed price increase must have a proportional increase in Supplier's list price to its other customers. Supplier represents and warrants that CE's prices are equal to or lower than any prices offered to any of Supplier's other customers worldwide. If Supplier enters into any arrangement wherein Supplier provides Products at a price lower than provided to CE, then Supplier shall notify CE and CE pricing shall be amended to incorporate such lower price. CE will not accept any price increase prior to acceptance of such increases by Supplier's other customers.
2. Supplier will invoice CE monthly for Products shipped and accepted during the previous month. CE shall receive a discount equal to 2% for all payments made within 30 days after receipt of invoice or acceptance of Products, whichever is later. CE agrees to pay undisputed invoices within 45 days after receipt of invoice. CE may withhold payment for all or a portion of any invoice that has erroneous charges, and the parties agree to resolve such disputes in a timely manner. All purchases qualify for the rebate and allowance programs offered to CE. CE is not required to purchase any minimum Product volume from Supplier. CE Canada shall qualify for a total rebate program equivalent to the CE rebate program.
3. If applicable, Supplier shall pay CE any and all rebates, catalog fees and other amounts due within 30 days following the end of each month, or quarter, as agreed upon. Supplier agrees to pay CE's reasonable fees and costs for any collection action necessary to recover such amounts.
4. When a Product price decreases, Supplier will provide CE inventory price protection for the inventory in stock at all CE locations or en route to CE or CE's customers. Supplier shall issue to CE a check or a credit at the time of the price decrease in the amount of the difference between the price paid by CE and the new price.
5. Supplier will ship all products via regular freight, F.O.B. the destination specified in CE's purchase order. Title to Products purchased hereunder shall pass to CE upon delivery. CE reserves the right to return any damaged or non-conforming Product for replacement product or a full refund (at CE's option) at any time and without any additional costs, including any restocking charge.
6. If Supplier is unable to fill any order within 10 days after receipt of such order, CE may purchase the back-ordered product (or a substantially similar substitute product) from any other supplier, including wholesalers. If the price paid for such substitute product exceeds Supplier's price to CE, Supplier will reimburse the price difference to CE until Supplier is able to provide the Product. Supplier shall reimburse CE for any customer penalties, losses, costs, and expenses resulting from Supplier's failure to timely supply Products.
7. Supplier will pay to CE the actual cost for fixing an error, for each catalog error that is the fault of Supplier. Evidence of each error will be submitted by CE to Supplier. Supplier must honor any erroneous price quote until the error is corrected.
8. Supplier represents, warrants and covenants: (i) it is a corporation duly organized, existing and in good standing under the laws of its state, country or province of organization; (ii) it has all requisite legal and corporate power and authority to enter into these Standard Purchase Order Terms and Conditions; (iii) the execution and delivery of these Standard Purchase Order Terms and Conditions and consummation of the transactions contemplated hereby will not constitute a breach or default under any other agreement to which it is a party or by which it is bound; (iv) it has the absolute right to sell the Products; and upon each sale, CE will acquire good and marketable title to the Products; (v) the Products conform to their manufacturer's and Supplier's published specifications and will be free from defects in material, workmanship and design under normal use and service; (vi) the Products conform to manufacturer's standard published warranty and are safe for their intended use(s); (vii) the Products are in new and unused condition; (viii) Supplier shall comply with all applicable federal, state and local laws and regulations, including any environmental laws and regulations and Supplier has obtained all required licenses and permits; and (ix) the Products and their packaging do not infringe any United States patent, registered design, trademark, patent or copyright or any similar state right or involve the misappropriation of any trade secrets; and (x) the Products are not manufactured by slave indentured, prison, or child labor or in a manner contrary to standards of fair treatment.
9. SUBJECT ONLY TO THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT OR AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR CONTINGENT DAMAGES OR PUNITIVE DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT.
10. For the term of the parties relationship, Supplier grants to CE the non-exclusive, royalty-free right to display Supplier's trademarks, logo types, trade names and insignia ("Supplier's Marks") in advertising and promotional material regarding the Products, or within CE's catalogs and electronic ordering sites, including without limitation E-Way. CE may authorize Supplier, from time to time, to display one or more of CE's trademarks, logo types, trade names and insignia ("CE's Marks"). Any display of CE's Marks shall be in accordance with CE standards and shall not be made without the prior written approval of CE Vice President of Communications. Supplier shall not, without the prior written consent of CE, issue press releases, marketing literature, public statements, or in any way engage in any other form of public disclosure relating to these Standard Purchase Order Terms and Conditions or CE's relationship with Supplier. Supplier will discontinue any such use of a CE Mark, as requested by CE. Any rights or purported rights in any CE Marks acquired through Supplier's use belong solely to CE.
11. Supplier agrees to defend, hold harmless and indemnify CE against any and all losses, costs, damage, liabilities, penalties and expenses (including costs and attorneys' fees) in any way, directly or indirectly relating, or allegedly relating, to the Products or services provided by Supplier, Supplier's negligence, willful misconduct, or breach of any representation or warranty or other provision of these Standard Purchase Order Terms and Conditions.
12. During the time that Supplier provides Products to CE, Supplier shall keep in force commercial general liability insurance (with an endorsement for product liability insurance) in an amount of no less than two million dollars (\$2,000,000.00) per occurrence and no less than five million dollars (\$5,000,000.00) in the aggregate for liability arising out of Supplier's performance under these Standard Purchase Order Terms and Conditions. Such insurance shall be in form and substance satisfactory to CE, naming CE as an additional insured, covering property damage as well as personal injury arising out of the condition, maintenance, use, operation or delivery of the Product. Supplier shall obtain from each insurer an endorsement upon the policies issued by it, or by independent instrument furnished to CE, that it will give CE 30 days' written notice before the policy in question shall be materially altered or canceled.
13. Supplier, for the period of time that Supplier supplies Products to CE, and for a period of two years thereafter, shall preserve all information and documentation, including but not limited to Supplier's invoices, related to these Standard Purchase Order Terms and Conditions, (collectively referred to as "Documentation"). Supplier agrees to make available such Documentation for audit by CE to enable CE to verify Supplier's compliance with these Standard Purchase Order Terms and Conditions. Such Documentation shall be made and kept in accordance with generally accepted accounting principles and shall be made available to CE. Supplier shall provide reasonable assistance necessary to enable CE to conduct such audit. Amounts found to be erroneously invoiced by Supplier to CE or rebates improperly withheld from CE ("Errors") shall be adjusted and reimbursed to CE within 30 days of discovery. If the audit reveals an Error in favor of CE such that an amount is due to CE equal to five percent (5%) or more of all amounts paid by CE to Supplier during the audited year (or years), Supplier will pay the expenses associated with such audit, in addition to the adjustments due and payable.
14. The parties agree not to disclose any confidential information furnished by the other party, except as required by law. For purposes hereof, such confidential information includes, but is not limited to, CE's purchasing patterns, customers, prices and any other financial programs offered to CE or CE customers. In the event a party believes it is required by subpoena or other legal process to disclose confidential information received from the other party, it will give prompt written notice to such other party prior to making any disclosures. In the event of any breach of this section, the parties agree that monetary damages may not be sufficient to remedy such breach and that the non-breaching party may suffer irreparable damages, and therefore, the parties agree that the non-breaching party will be entitled to injunctive relief.
15. Supplier agrees that it will not take any action to establish direct, or indirect, relationships with CE customers to the detriment of CE, and/or CE's relationship with such customers, during the term of the business relationship between CE and Supplier and for a period of one year after termination of the relationship.
16. These Standard Terms and Conditions shall be in effect with respect to all Products purchased by, and sold to, CE and CE customers. All sections which by its terms would naturally survive the termination of the relationship between the parties.
17. Supplier's and CE's relationship to one another is that of independent contractors. CE has the sole right and responsibility to set pricing to CE customers. CE assumes no liability for personal injury or property damage arising out of Supplier's performance of these Standard Purchase Order Terms and Conditions or arising out of the performance of services by any of Supplier's representatives or employees.
18. Supplier shall not assign any of its obligations hereunder without the prior written consent of CE and any such attempted assignment shall be void. CE may assign its rights and obligations to any CE subsidiary, parent, affiliate or successor. The parties acknowledge and agree that CE's customers are third party beneficiaries of all representations, warranties and indemnities set forth in Sections 7 and 9, to the extent they are related to Products sold to CE customers. These Standard Purchase Order Terms and Conditions is for the benefit of the parties hereto and shall be binding upon and inure to the benefit of their successors, permitted assigns and surviving entities of any merger, sale, consolidation or reorganization. These Standard Purchase Order Terms and Conditions contain the entire agreement between the parties, and there are no verbal understandings or agreements different from those stated in these Standard Purchase Order Terms and Conditions. In the event these Purchase Order Terms and Conditions conflict with language between any Supplier Master Agreement, the Supplier Master Agreement terms and conditions shall control.
19. In the event that any of the terms of these Standard Purchase Order Terms and Conditions are or become illegal or unenforceable, such terms shall be null and void and shall be deemed deleted from these Standard Purchase Order Terms and Conditions, and all the remaining terms of these Standard Purchase Order Terms and Conditions shall remain in full force and effect. In the event that one party fails to insist on performance of any of the terms and conditions, or fails to exercise any of its rights or privileges hereunder, such failure shall not constitute a waiver of such terms, conditions, rights or privileges. These Standard Purchase Order Terms and Conditions shall be construed in accordance with the Law of the State of Colorado regardless of any conflict or choice of law provision. Any action to enforce the terms of these Standard Purchase Order Terms and Conditions shall be instituted in Broomfield County, Colorado. If any party to these Standard Purchase Order Terms and Conditions brings an action to enforce its rights under these Standard Purchase Order Terms and Conditions, the prevailing party shall be entitled to recover its costs, including attorneys' fees incurred in connection with such action.
20. CE does not agree to, and shall not be bound by, any terms or conditions contained in Supplier's invoices or purchase order forms, except as expressly agreed to in writing, signed by an authorized representative of CE. Any additional modifications that are not expressly agreed to are hereby rejected.