



## PURCHASE ORDER TERMS AND CONDITIONS

The purchase order summary that references these terms and conditions and any accompanying document(s) (collectively the "**Purchase Order**"), constitutes the entire agreement between the applicable TIDAL entity identified in this Purchase Order, ("**TIDAL**") and the vendor identified in this Purchase Order ("**Vendor**"). TIDAL's submission of this Purchase Order is conditioned on Vendor's agreement that any terms different from or in addition to the terms of this Purchase Order shall not form a part of the Purchase Order. Vendor's electronic acceptance, receipt and acknowledgement of this Purchase Order, or commencement of performance constitutes Vendor's acceptance of these terms and conditions. The Purchase Order may be revoked at any time prior to acceptance. Notwithstanding the foregoing, if the parties enter or have entered into a services agreement, purchase agreement or any other definitive agreement ("**Agreement**"), covering procurement of any services ("**Services**") or commodities and/or goods described in this Purchase Order (collectively, "**Products**"), the terms of such Agreement shall prevail over any inconsistent terms herein. Except with respect to any such Agreement, these terms and conditions will be controlling over any additional, inconsistent or conflicting terms of any purchase order, quotation, confirmation, invoice, or other written correspondence relating to the Services or Products, even if accepted in writing by both parties.

**DELIVERY:** Vendor will expediently perform its obligations under this Purchase Order. If Vendor delivers the Products after the date of delivery of Products ("**Delivery Date**"), TIDAL may reject the Products. Vendor will preserve, pack, package and handle the Products so as to protect the Products from loss or damage and in accordance with industry best practices. Without limiting the foregoing, Vendor shall observe the requirements of any local laws and regulations relating to hazardous work, including, without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage and disposal. Unless otherwise expressly agreed in writing or specified in a Purchase Order, delivery will be made DDP TIDAL's Ship To location specified in the Purchase Order (Incoterms 2010).

**PAYMENT:** TIDAL will pay Vendor the price set forth in this Purchase Order in accordance with the payment terms specified herein upon the occurrence of the later of: (i) the Delivery Date; (ii) the date of TIDAL's acceptance of all Products or any portion thereof; or (iii) TIDAL's receipt of a properly prepared invoice. A properly prepared invoice must include the Purchase Order number and, if required in the Purchase Order, Vendor's certification of conformance of the Work to the requirements. TIDAL may, at any time, offset payment of any amounts Vendor owes TIDAL against any amounts TIDAL owes to Vendor or any of its affiliated companies, however such offsetting of payments shall have no effect on the presentation of amounts due and payable, or Taxes (as defined below) on the invoice. TIDAL uses a web-enabled vendor portal platform to digitize the invoice process in connection with the Services ("**Vendor Portal**"). Vendor hereby agrees that all fees and expenses incurred by Vendor in connection with this Agreement will be sent via invoice through the Vendor Portal at <https://block.support.tradeshift.com>. Any questions regarding the Vendor Portal can be directed to <https://squarecorp.secure.force.com/ape/AccountsPayableExtForm>.

**TAXES:** Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the payments under this Purchase Order. "**Indirect Taxes**" means any applicable sales, use, value-added, goods and services, consumption, telecommunications, documentary, or other similar taxes, duties, levies, fees, or excises imposed by any federal, state, foreign, provincial or local governmental taxing authority with respect to the transactions and payments under this Purchase Order. Amounts payable under this Purchase Order are exclusive of Indirect Taxes. If Vendor is legally obligated to collect applicable Indirect Taxes, such Indirect Taxes shall be calculated by Vendor based on the taxable fees payable for the relevant period (by location, if applicable), and separately stated on a valid, accurate and complete invoice for that period which meets



applicable taxing authority invoicing requirements. On all invoices issued to TIDAL, Vendor will specify (i) all taxable and non-taxable charges by location (as provided by TIDAL), and (ii) applicable Taxes on taxable charges. TIDAL shall pay the correct and undisputed invoice unless TIDAL provides Vendor with a valid tax exemption certificate or any other additional documentation that satisfies the requirements to establish that the otherwise applicable Indirect Taxes are not required to be charged. TIDAL will not be responsible for any other taxes, assessments, duties, permits, tariffs, fees, or other charges of any kind.

TIDAL may be obligated under applicable law to report certain information to tax and revenue authorities (“**Tax Information**”) and/or to Vendor with respect to amounts payable under this Purchase Order. Prior to payment, Vendor shall provide TIDAL with the necessary tax forms, tax identification details, and other tax documentation (e.g. IRS Forms W-8 or W-9 for any United States tax reporting), to complete any applicable Tax Information reporting and recertify such documentation from time to time, as may be required by applicable law. Vendor acknowledges and agrees that TIDAL will report to the applicable tax or revenue authorities the required Tax Information (including the total amount of payments paid to Vendor during the relevant reporting period). Vendor is solely responsible for ensuring that the information contained in Vendor’s tax forms, identification details, and documentation provided to TIDAL is current, complete, and accurate.

If applicable, TIDAL shall be entitled to deduct from any payments to Vendor the amount of any withholding taxes with respect to amounts payable, or any taxes in each case required to be withheld by TIDAL to the extent that TIDAL pays to the appropriate governmental authority on behalf of Vendor such taxes. Any amounts so withheld shall be treated as having been paid for all purposes of this Purchase Order. Upon presentation to TIDAL by Vendor of appropriate and timely Tax forms and documentation claiming the benefits of an applicable income tax treaty to amounts payable, TIDAL agrees to reduce or eliminate withholding in accordance with such treaty claim. If TIDAL eliminates or reduces withholding tax in accordance with a treaty claim by Vendor and a relevant governmental taxing authority determines a higher withholding tax amount should have been paid than that which was withheld by TIDAL, Vendor agrees to indemnify TIDAL for the full amount of such underwithholding as well as any related penalties and interest.

**OWNERSHIP:** Vendor agrees that to the extent the Services contain any Deliverables (as defined herein), TIDAL shall be the sole and exclusive owner of such Deliverables. For these purposes, “**Deliverables**” shall include all software (including modifications and documentation), products, inventions, designs, specifications, documents, writings and other materials created, conceived, prepared, made, discovered or produced by Vendor for TIDAL pursuant to this Purchase Order). Vendor irrevocably assigns and transfers to TIDAL all of its worldwide right and title to, and interest in, the Deliverables, including all associated copyright, patent, trade secret, trademark and any other intellectual property or proprietary rights (“**Intellectual Property Rights**”). Additionally, Vendor grants to TIDAL a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, non-terminable, transferable, sub-licensable license to all Intellectual Property Rights used in the creation of the Deliverables in order for TIDAL to exercise its rights in the Deliverables as contemplated by this Purchase Order. Without limiting the foregoing, (i) the Deliverables are “works made for hire” to the extent permitted by law, and (ii) Vendor will not assert, and otherwise waives, any “moral rights” in the Deliverables and assigns to TIDAL all “moral rights” in the Deliverables.

**TERM AND TERMINATION:** This Purchase Order is effective until all Products under this Purchase Order, any applicable SOW(s), or both have been accepted and paid for by TIDAL. TIDAL may terminate this Purchase Order at any time, for no reason or for any reason, upon written notice to Vendor. Either TIDAL or Vendor may terminate this Purchase Order immediately upon written notice to the other party for any material breach. TIDAL will have no further payment obligation in connection with the termination of this beyond the date of termination.

**WARRANTIES:**



**(a) Performance Warranties.** Vendor warrants to TIDAL and TIDAL's customers for the longer of Vendor's normal warranty period or for one (1) year following the date of TIDAL's acceptance of the Products that: (i) when received by TIDAL from Vendor, the Products will be free from defects in design, material, workmanship and manufacture; (ii) the Products will conform to the applicable documentation; (iii) the Products will be suitable for the purposes for which they are intended including without limitation purposes made known to Vendor; and (iv) all Products will be new and unused and not refurbished, unless otherwise specified by TIDAL or by Vendor with TIDAL's prior written approval of any other such condition. The foregoing warranties are in addition to all other warranties, whether express or implied, and will survive delivery, inspection, acceptance, or payment by TIDAL.

**(b) General Warranties.** Vendor represents and warrants that: (i) Vendor has all necessary rights of title to the Products and has transferred all such rights and title to TIDAL upon TIDAL's acceptance of the Products; (ii) the Products will be of professional quality and/or performed consistently with generally accepted industry standards; (iii) Vendor's performance under this Purchase Order will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which Vendor is bound; (iv) Vendor will comply with all applicable laws and regulations, including without limitation any applicable import and export employment and anti-bribery laws and regulations; (v) software will be free from any virus, malicious device, worm, Trojan, time bomb or other harmful or destructive code.

**CONFIDENTIALITY:** Subject to additional requirements in any applicable nondisclosure agreement between Vendor and TIDAL, Vendor will (i) keep confidential the terms of this Purchase Order and all nonpublic and proprietary TIDAL information, and will only use such information to provide Products and Services under this Purchase Order, and will not disclose such information except to the extent required by law after giving reasonable notice to TIDAL if permitted by law; and (ii) not use in providing Products or Services or disclose to TIDAL any materials or documents of another party considered confidential or proprietary unless it has obtained written authorization from that party. Vendor will not issue any public statements or use TIDAL's trademarks or logo without TIDAL's express prior written consent.

#### **INDEMNIFICATION.**

**(a) General.** Vendor will indemnify, defend and hold TIDAL and its officers, directors, agents, employees, successors and customers harmless against any and all claims, liabilities, losses, damages, settlements, costs and expenses (including attorneys' fees) made against or sustained by TIDAL arising from: (i) any property damage, personal injury or death related to the Products; (ii) all loss, liability, and damages arising from or caused directly or indirectly by any act or omission of Vendor, Vendor's agents, employees, or subcontractors; (iii) any breach of this Purchase Order by Vendor or anyone acting on Vendor's behalf; and (iv) royalty claims, liens or any other encumbrances on the Products supplied hereunder. Further, in the event that a taxing authority assesses additional tax (or associated penalties or interest) on the transactions at issue in this Purchase Order, Vendor shall fully indemnify, defend, and hold TIDAL harmless against such assessments, inclusive of penalties and interest. For the avoidance of doubt, TIDAL shall not be liable to Vendor for any taxes (or associated penalties or interest) that Vendor fails to collect (or undercollects) with respect to this Purchase Order.

**(b) Intellectual Property.** Vendor will indemnify, defend and hold TIDAL and its officers, directors, agents, employees, successors and customers harmless against any and all claims, liabilities, losses, damages, settlements, costs and expenses (including attorneys' fees) made against or sustained by TIDAL arising from any claim that the Products infringe or misappropriate any third party Intellectual Property Rights. If TIDAL's use of any of the Products is enjoined or, in TIDAL's reasonable opinion, is likely to be enjoined as a result of any such claim or allegation of Intellectual Property Infringement, Vendor agrees, at TIDAL's option to: (i) accept return of the Products from TIDAL and refund to TIDAL the amounts paid by TIDAL with respect to such Products; (ii) modify the Products so that they become non-infringing but equivalent in functionality, quality, compatibility and performance; or (iii) procure for TIDAL and its customers the right to continue using and distributing the Products.



**INSURANCE:** Vendor will secure and maintain insurance against general liability and property damage. Vendor will also maintain workers compensation insurance as required by law, including employer's liability coverage. Depending upon services, TIDAL may require suppliers to carry additional insurance limits and/or coverages. Vendor will provide TIDAL documentation evidencing the required coverage upon TIDAL's reasonable request.

**LIMITED LIABILITY: EXCEPT FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, CONFIDENTIALITY BREACHES OR INDEMNIFICATION OBLIGATIONS UNDER THIS PURCHASE ORDER: (A) TIDAL WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES; AND (B) TIDAL'S LIABILITY ARISING OUT OF THIS PURCHASE ORDER WILL NOT EXCEED THE AMOUNT ACTUALLY PAID OR PAYABLE TO VENDOR UNDER THIS PURCHASE ORDER.**

**MISCELLANEOUS:** The relationship of Vendor and TIDAL is that of independent contractor. Except as provided herein, no term or condition of this Purchase Order may be amended or deemed waived, except by a writing signed by both parties that refers to this Purchase Order. No right or obligation under this Purchase Order (including the right to receive monies due) may be assigned, delegated or subcontracted by Vendor without the prior written consent of TIDAL, and any purported assignment without such consent will be void. This Purchase Order will be construed in accordance with the laws of the State of New York, without giving effect to the principles of conflict of laws. For any disputes arising out of or relating to this Agreement, the parties consent to personal jurisdiction in, and the exclusive venue of, the courts in New York County, New York. The rights and remedies herein provided are in addition to those available to either party at law or in equity.