



FortCady  
CaliforniaCorp

## Fort Cady California Corporation Standard Terms and Conditions

27555 Hector Road, Newberry Springs California 92365

This Purchase Order ("PO") and any attachments are the sole agreement between Fort Cady California Corporation (FCCC) and/or its subsidiaries or affiliates who are issuing a PO pursuant to these terms and conditions ("FCCC") and the Seller identified on the face of this PO ("Seller") regarding the goods or services specified in this PO.

**1. ACCEPTANCE OF TERMS:** This PO is expressly conditioned on Seller's acceptance of all the terms and conditions set forth herein. FCCC expressly objects to any additions, deletions or differences in the terms or conditions contained in Seller's quotation, proposal, acknowledgment or other document, whether or not such additions, deletions or differences materially alter this PO. This PO may be issued in addition to other duly signed FCCC agreements, exhibits and schedules incorporated therein ("Agreement") made with respect to the subject matter of this PO. In the event of an inconsistency or conflict between the provisions of any Agreement and this PO, the inconsistency or conflict will be resolved by giving precedence in the following order: (a) the Agreement; (b) the provisions appearing on the front and reverse side of this PO or the then-current terms and conditions located at <https://fortcady.com/purchasing/> and (c) other provisions when attached and agreed to in writing by FCCC.

**2. PERFORMANCE:** Time is of the essence in the performance of this PO and if the goods are not delivered or the services not provided in the manner and at the times specified, FCCC reserves the right without liability and in addition to its other rights and remedies to take either or both of the following actions: (a) direct expedited delivery of the goods or performance of services, with any difference in cost caused by such change paid by Seller, and/or (b) purchase substitute goods and charge Seller with any loss or additional costs FCCC incurs. Seller will promptly advise FCCC of any delay in performance, including notice with regard to any goods placed under backorder. Seller's performance is not deemed completed until the goods or services have been accepted by FCCC. All goods shipped under this PO are to be shipped FOB-Newberry Springs, FCCC's facilities.

**3. INSPECTION:** All goods and services purchased hereunder are subject to inspection by FCCC at all reasonable times and places notwithstanding the terms of payment, and in any event, prior to final acceptance. No inspection made prior to final acceptance will relieve Seller from responsibility for failure to meet the requirements of this PO. In the event the goods or services do not meet the applicable specifications and instructions, Seller will promptly re-perform the nonconforming services or provide replacement goods satisfactory to FCCC at Seller's sole expense. If Seller is unable to accomplish the foregoing, FCCC may procure such goods or services from another source and charge to Seller's account all costs, expenses and damages associated therewith.

**4. PAYMENT:** Invoices must contain the following information: PO number, part numbers, description of services, prices, extended totals and attach all supporting documentation, if any. To the extent applicable, all invoices must include any tax amounts, listed separately. Invoices submitted hereunder will be paid **Net 60 days** after receipt of a correct invoice and acceptance of goods or services by FCCC, unless otherwise specified in contracts or written agreements. Any adjustments in Seller's invoices due to late performance, rejections or other failure to comply with the requirements of this PO may be made by FCCC before payment. Payment does not constitute final acceptance. FCCC may offset against any payment hereunder any amount owed to FCCC by Seller or its affiliates.

**5. CHANGES:** FCCC may, by written notice to Seller make changes to any one or more of the following: (a) specifications for services or goods, (b) quantity, and (c) place and/or time of performance. For any reason, FCCC may also direct Seller to suspend in whole or in part the provision of goods or the performance of services hereunder permanently or for such period of time as may be determined by FCCC to be necessary or desirable. If any such change or suspension causes an increase or decrease in the cost or time required for the performance of services or provision of goods hereunder, an adjustment may be made in the price or delivery schedule, or both, and the PO will be modified in accordance with Section 22. Any claim for adjustment by Seller will be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of the notice of change.

**6. WARRANTY:** Seller expressly warrants that the goods or services provided under this PO will be performed in accordance with FCCC's specifications and instructions. Seller further warrants that the goods and services will be merchantable, non-infringing, free from defects and fit and sufficient for the purpose intended. Further, the services will be performed with the highest degree of skill and judgment exercised by recognized professionals performing the same or similar services. These warranties are in addition to all other warranties, express, implied or statutory. Payment for, inspection of, or receipt of the goods or services does not constitute a waiver of any breach of foregoing warranties. In the event of any breach of the foregoing warranty, Seller will, at its own expense and at FCCC's option either: (a) provide replacement goods satisfactory to FCCC, (b) re-perform the nonconforming services to the satisfaction of FCCC, or (c) refund to FCCC the total amount paid for such goods or services. Seller will extend all warranties it receives from its Sellers to FCCC and to FCCC's customers.



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**7. CONFIDENTIAL INFORMATION:** FCCC and Seller acknowledge that in their course of dealings, Seller may acquire from FCCC confidential and proprietary information about FCCC, its business activities and operations, its employees, trade secrets or any other information which by its sense or nature should reasonably be considered confidential (the “Confidential Information”). The confidential information of FCCC will only be disclosed to Seller’s employees, agents or consultants with a need to know and who are under a written obligation to keep the information confidential. Seller will not disclose the Confidential Information to any third parties. Seller will use the same degree of care but no less than a reasonable degree of care that it uses with regard to its own confidential information to prevent the disclosure of FCCC Confidential Information.

**8. TERMINATION FOR CONVENIENCE:** FCCC may terminate this PO in whole or in part at any time and without cause. Upon notice of termination, Seller will inform FCCC of the extent to which it has completed its performance under this PO as of the date of the notice and collect and deliver to FCCC any goods or Work Product, as defined in Section 11, which then exists. FCCC will pay Seller for goods or services accepted and performed through the effective date of termination provided that FCCC will not be obligated to pay more than the payment that would have been due had Seller completed or provided the goods or services. FCCC will have no further payment obligation in connection with any termination.

**9. INDEMNIFICATION:** Seller and its subcontractor(s) will indemnify, defend and hold FCCC, its officers, directors, resellers, employees, agents and customers harmless from and against any and all losses, liabilities, costs, claims, damages and expenses (including attorneys’ fees and costs) arising out of or related to this PO including but not limited to the provision of goods, services and works of improvement under this PO or Seller’s breach of any term or provision of this PO, including any claims that any such goods or services infringe any patent, copyright, trademark, trade secret or any other proprietary right of any third party. The foregoing shall not be construed to require indemnification by the Seller or subcontractor(s) for damage or injury arising from the sole negligence of FCCC and/or its agents.

**10. LIMITATION OF LIABILITY: TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL FCCC’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS PO EXCEED THE TOTAL AMOUNT ACTUALLY PAID OR PAYABLE BY FCCC TO SELLER FOR THE APPLICABLE GOODS OR SERVICES PROVIDED UNDER THIS PO NOR WILL FCCC OR ITS RELATED LEGAL ENTITIES BE LIABLE FOR ANY LOST REVENUES, LOST PROFITS, INCIDENTAL, DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.**

**11. PATENTS AND DATA:** All records, software, files, data, reports, information, work product, notes, plans, strategies, intellectual property and other information provided by FCCC or prepared or developed by or for FCCC pursuant to this PO (“Work Product”) is the property of FCCC and constitutes works made for hire under applicable law. Seller assigns all intellectual property rights in the Work Product to FCCC and agrees to complete any documents requested by FCCC to perfect its ownership in the Work Product. Seller waives all moral rights related to the Work Product. Seller grants to FCCC an unlimited, nonexclusive license to use, copy, modify or create derivative works of any materials delivered to FCCC which are developed prior to or outside of this PO. All materials, equipment and other information supplied to Seller by FCCC will remain the property of FCCC and be returned to FCCC when no longer needed by Seller in the provision of services or goods and in any event upon the expiration or earlier termination of this PO.

**12. RELATIONSHIP OF THE PARTIES:** Seller is an independent contractor and nothing contained in this PO will be deemed or construed to create a partnership, joint venture, agency or other relationship other than that of Seller and customer. Seller is solely responsible for payment of all compensation owed to its employees as well as employment related taxes. Any agreements or commitments entered into by Seller are not binding on FCCC and further FCCC assumes no liability with respect to any agreements or commitments entered into by Seller with its employees, agents, Sellers and the like.

**13. SUBCONTRACTS AND ASSIGNMENTS:** Seller agrees to obtain FCCC's approval before subcontracting this PO or any portion thereof. This PO is not to be assigned or delegated by Seller without the prior written consent of FCCC.

**14. COMPLIANCE WITH LAWS:** Seller will comply with the applicable provisions of all federal, state or local laws or ordinances and all orders, rules and regulations issued thereunder, including without limitation, any local law or regulations relating to the privacy, security, integrity and availability of personal data, or restrictions on the Processing, movement or transfer of such personal data (“Privacy Laws”). Seller agrees to: (a) comply with FCCC’s Data Privacy Requirements, (b) enter into any additional agreements or adhere to any additional contractual terms and conditions relating to personal data as FCCC may instruct in writing that



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it deems necessary to address applicable Privacy Laws, including any required agreements for jurisdictions that have restrictions pertaining the Processing or transfer of personal data, and (c) where Seller provides any Personal Data to FCCC, Seller warrants that it has collected such Personal Data with the affirmative, written consent of the data subjects for Seller to disclose such Personal Data to FCCC and/or its affiliates. Seller will indemnify, defend and hold FCCC and its officers, directors, resellers, employees, agents and customers harmless from and against any and all losses liabilities, costs, claims, damages and expenses (including attorneys' fees and costs) arising out of or related to its breach of its obligations under this Section.

**15. ANTI-CORRUPTION:** All Seller actions related directly or indirectly to the performance of this PO will comply with all applicable anti-corruption laws. Accordingly, Seller will not offer, promise, or provide any payments, loans, gifts of money, or anything of value to secure an improper advantage or for a corrupt purpose as described in applicable law.

**16. INSURANCE:** Seller/Service Provider will secure and maintain insurance as noted in the attached sample certificate (ref Attachment 1) maintaining minimum limits of \$ 5MM thereby providing sufficient coverage to comply with its obligations and duty to indemnify as required under this PO. Within five (5) days of receipt of a request from FCCC, Seller agrees to provide FCCC with a certificate of insurance evidencing Seller's insurance coverage as agreed upon.

**17. PRESENCE ON BUYER'S PREMISES:** Seller agrees to the following: (a) Seller is performing the Services at or on a work site, before Seller commences Services, Seller shall obtain full particulars as to the limitations or restrictions on Seller's activities or rights of occupation under the licenses, permits and rights of entry acquired or provided by Buyer for the Services at a work site and the access thereto; (b) Seller shall perform the Services at a work site in strict compliance with Buyer's approved safety procedures, and shall ensure that all subcontractors comply therewith; (c) Seller shall maintain the work site in a clean and orderly condition, at all times, clear of all tools, equipment, waste materials, rubbish and any obstructions and hazards; (d) Seller acknowledges that Buyer has a zero tolerance drug policy, therefore Seller, its employees and all subcontractors are subject to random drug screening. Any positive test will result in the immediate removal from Buyer's site

**18. PUBLICITY AND DISCLOSURE:** Without securing the prior written consent of FCCC in each instance, Seller will not use the name or logo of FCCC or FCCC's customer in any news release, public announcement, advertisement, or other form of publicity, or disclose any of the terms or subject matter of this PO to any third party except as may be required to perform this PO.

**19. NON-WAIVER OF RIGHTS:** The failure of FCCC to insist upon strict performance of any of the terms and conditions in this PO or to exercise any rights or remedies hereunder will not be construed as a waiver of its rights to assert any of the same or any other terms and conditions under this PO.

**20. REMEDIES:** Any rights and remedies specified under this PO are cumulative, non-exclusive and in addition to any other rights and remedies available at law or in equity.

**21. SEVERABILITY:** If any term contained in this PO is held or finally determined to be invalid, illegal or unenforceable in any respect, in whole or in part, such term will be severed from this PO, and the remaining terms contained herein will continue in full force and effect.

**22. INTERPRETATION:** The captions and headings used in this PO are solely for the convenience of the parties, and are not to be used in the interpretation of the text of this PO. Each party has read and agreed to the specific language of this PO; no conflict, ambiguity, or doubtful interpretation will be construed against the drafter.

**23. GOVERNING LAW:** This PO is governed by and construed in accordance with the laws of the State of California without regard to its conflict of law provisions. Seller agrees that the state and federal courts in Apple Valley, California will have the exclusive jurisdiction and venue over any claims arising out of or related to this PO.

**24. ENTIRE AGREEMENT:** This PO, including all documents incorporated herein by reference, constitutes the entire agreement and understanding between the parties and supersedes and replaces any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof. Except as specified in Section 1 or 5 above, no change, modification or revision of this PO is valid unless agreed to in writing by FCCC.

**25. SURVIVAL:** Both parties agree that any term or condition of this PO which by its sense or nature should be deemed to survive the expiration or termination of this PO will so survive.



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