



PEPSI-COLA ADVERTISING & MARKETING

Change Purchase Order #: 4101885383	
PO Name:	105388 Isee DX RockstarHaloSuction LC
Date:	09/07/2021
Buyer:	PEPSI-COLA ADVERTISING & MARKETING
Requisitioner:	ANUSHA GUDIPUDI
E-Mail:	ANUSHA.GUDIPUDI@PEPSICO.COM
Telephone:	
Buyer Representative:	MARISA AMELIO
E-Mail:	MARISA.AMELIO@PEPSICO.COM
Telephone:	

Seller:
 Company
 ISEE STORE INNOVATIONS LLC
 3725 FOUNDRY WAY STE 223
 SAINT LOUIS MO 63110
 UNITED STATES OF AMERICA

Ship to Information:
 Pepsico
 Pepsico Inc.
 700 ANDERSON HILL RD
 PURCHASE NY 10577-1401
 UNITED STATES OF AMERICA

Delivery date: 09/15/2021

Terms of payment: Payment in 60 Days

Invoice address:
 Pepsico
 Pepsico Inc.
 PepsiCo NASS Accounts Payable
 PO Box 1800
 WINSTON SALEM NC 27105

Delivery Information:
 ANUSHA GUDIPUDI

 ANUSHA.GUDIPUDI@PEPSICO.COM

EMAIL INVOICE TO: SPA-IT.SFSInvoices@pepsico.com
INVOICE INQUIRIES: SPA-SFS.APCustomerService@pepsico.com

Item	Product No.	Name	Delivery Date	Quantity	Unit	Price Per Unit	Net value	Tax
1		105388 Isee DX RockstarHaloSuction LC	09/15/2021	44,704	UNT	1.00 USD / 1 UNT	44,704.00 USD	3,743.96 USD
	LINE ITEM CHANGED							

Subtotal = 44,704.00 USD
Tax = 3,743.96 USD
Total Value = 48,447.96 USD

GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

These terms and conditions of purchase, together with the document to which these terms are attached or into which these terms are incorporated, (collectively, "**Order**"), set forth the terms and conditions under which the buying party specified in the Order ("**Buyer**") offers to purchase the products described in the Order ("**Goods**") or the services (including, without limitation, all related deliverables) described in the Order or ancillary to such Goods ("**Services**") from the selling party specified in the Order ("**Seller**").

1. SELLER'S ACCEPTANCE OF TERMS

Seller's express agreement to the Order, its initial performance of the Order or any commencement of work on any Goods or Services, whichever occurs first, constitutes acceptance of the Order.

Seller's acceptance is limited to acceptance of the express terms of this Order and does not include any additional or different terms proposed by Seller. Any additional or different terms in any document or communication provided by Seller are hereby deemed to be material alterations and are hereby objected to and rejected by Buyer.

2. DELIVERY OF GOODS

Seller will prepare, label and pack for shipment all Goods in accordance with good commercial practices and carriers' requirements and to ensure safe delivery and secure the lowest transportation rates practicable. Seller will mark each container of Goods with the order number specified in the Order and include a packing sheet listing this number in each unit of shipment, and, if applicable, any necessary components and instructions. Buyer will not pay charges for packing, crating, shipping or delivery, unless explicitly stated in the Order. Seller will maintain manufacturing and shipment records for at least two years from the date of shipment.

Time is of the essence for this Order. Seller will deliver to Buyer Goods and Services ("**G&S**") that meet all specifications, standards, drawings, samples and requirements of Buyer, including, without limitation, those described in the Order and those pertaining to quantity, scope and dates for delivery and performance (all such specifications and requirements, "**Specifications**").

Buyer may, at any time prior to delivery, change Specifications by providing Seller with written notice, and, if a change increases or decreases the cost or time required for performance, the parties will equitably adjust this Order in writing accordingly.

3. RISK OF LOSS

Title will pass to Buyer upon delivery of G&S to the delivery point designated by Buyer. Seller will be responsible and bear the risk of loss or damage for all G&S until delivered to such designated delivery point and accepted by Buyer (as provided by Section 4), regardless of the transfer of title.

4. BUYER'S INSPECTION AND ACCEPTANCE

Buyer may reject or revoke acceptance of any G&S that do not meet all Specifications ("**Non-conforming G&S**"), in which case, Buyer will have the rights set forth in Section 7(b).

Buyer's inspection or use of, or payment for, any G&S does not constitute Buyer's acceptance of any G&S and will not affect Seller's obligations and warranties, or Buyer's rights, under this Order. Buyer's count as to the quantity of Goods delivered will be accepted as final and conclusive on all shipments that are not accompanied by a packing slip indicating the quantity delivered.

5. INVOICE

Seller will promptly invoice Buyer for G&S. Buyer will have no obligation to pay Seller for any G&S unless (a) Buyer has accepted such G&S; and (b) Buyer has received from Seller an undisputed invoice (including the order number) for such G&S in a form acceptable to Buyer within 120 days of Buyer's acceptance of such G&S.

6. PRICE WARRANTY AND SETOFF

The price on this Order is firm and is the total amount due from Buyer for G&S (including, without limitation, any duties, taxes and other charges). Seller warrants that the price of any G&S under this Order is no less favorable than that currently extended to any of Seller's other customers of similar account size for a similar quantity of similar goods or similar scope of similar services.

If Buyer has a claim against Seller relating to this Order, Buyer may deduct or set off disputed amounts from any amounts Buyer owes Seller.

7. REPRESENTATIONS AND WARRANTIES

(a) Seller represents and warrants to Buyer that: (i) all G&S will: (A) conform to Specifications; (B) be of the highest quality and free from defects in material and workmanship; (C) be merchantable, safe and appropriate for the purposes for which G&S of a similar kind are normally used; (D) be fit for the particular purpose for which Buyer intends to use such G&S; (E) be new, unless otherwise specified in the Order; and (F) with respect to Services, be diligently performed by Seller or any of its employees, agents, independent contractors (including subcontractors) or suppliers (collectively, "**Seller Personnel**") who are experienced and sufficiently skilled to perform Seller's responsibilities under this Order, in accordance with the highest standards of workmanship; (ii) Seller possesses the authority to execute, deliver and perform this Order; (iii) Seller's execution, delivery and performance of this Order, G&S and Buyer and its affiliates' use of G&S will not: (A) violate any Applicable Laws or Buyer Policies (as defined in Section 8); (B) violate any of Seller's agreements with, or rights of, third parties; (C) infringe or misappropriate any third-party intellectual property rights; or (D) cause any injury or damage to any person or property (regardless of whether Seller uses any equipment or materials provided or owned by Buyer); and (iv) Seller has, and will convey to Buyer, good, marketable title to all G&S, free and clear of any lien or encumbrances.

(b) Without affecting any of Buyer's other rights or remedies, in the event of a breach of this Section or any other representations or warranties, at Buyer's election, Seller will promptly and at no additional cost to Buyer: (i) replace, re-perform or modify any Non-conforming G&S, in accordance with Buyer's reasonable satisfaction within seven days of Buyer's request or (ii) refund to Buyer, or credit Buyer's account, the entire amount Buyer paid for any affected G&S. Seller will reimburse Buyer for any costs reasonably incurred by Buyer due to Seller's failure to meet Specifications, including, without limitation, if Buyer purchases substitute goods or services in the event of Seller's failure to make timely delivery of G&S that meet Specifications.

(c) Seller will pass through to Buyer (such that Buyer is a beneficiary of) any rights Seller obtains under warranties and indemnities from any third-party contractors or suppliers in connection with any G&S to the extent permitted by such contractors or suppliers.

8. COMPLIANCE; EQUAL EMPLOYMENT OPPORTUNITY

Seller and the G&S will comply with all federal, state and local laws and other official decrees of any governmental body, including, without limitation, the Foreign Corrupt Practices Act (collectively, "**Applicable Laws**"), as well as Buyer policies, as amended from time to time, including, without limitation, PepsiCo, Inc.'s Global Supplier Code of Conduct, available in its current form at www.PepsiCo.com/SupplierCodeofConduct; Raw Material Quality & Food Safety Policy; and Responsible & Sustainable Sourcing Strategy (such policies, collectively, "**Buyer Policies**").

Without limiting the generality of the foregoing, **Buyer and Seller will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that Buyer and Seller take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.**

9. RECALL

If Seller learns of any issue (a) relating to the safety of G&S, (b) adversely affecting the quality of G&S or products utilizing or incorporating G&S ("**Affected Products**"), or (c) is advised of such a condition by competent authorities of any government having jurisdiction over G&S or Affected Products, Seller will promptly advise Buyer in writing and communicate all relevant and known facts and materials.

Buyer has the sole discretion to initiate and direct the content, scope and timing of a recall, market withdrawal, stock recovery, product correction or advisory safety communication (each, a "**Recall Action**") regarding Affected Products. Upon Buyer's request, Seller will conduct, or assist Buyer in conducting, a Recall Action. Seller will cooperate fully and take all such steps reasonably requested to implement, or assist Buyer in its implementation of, a Recall Action in a timely and complete manner.

10. INDEMNIFICATION

Seller will defend, indemnify and hold harmless Buyer, its affiliates, and their respective officers, directors, employees, agents and vendors from and against all claims (each a "**Claim**") and all losses, damages, liabilities and expenses (including, without limitation, attorneys' fees) related to, in connection with or arising out of: (a) any defect in any G&S; (b) the breach of any term of this Order; (c) any act or omission by Seller or any Seller Personnel; or (d) any alleged infringement or misappropriation of third party intellectual property rights in connection with the use of any G&S.

At Seller's expense, Seller will, upon notice from Buyer, assume the defense of a Claim. Buyer may elect to be represented by, and actively participate through, its own counsel with respect to any Claim. Seller will not settle any Claim without Buyer's prior written consent, not to be unreasonably withheld. If any judgment or lien is placed upon or obtained against Buyer's property as a result of any Claim, Seller will dissolve and discharge, if possible, the lien by giving bond or otherwise.

11. INSURANCE

Seller will maintain insurance coverage sufficient to satisfy its obligations under this Order. Without limiting the generality of the foregoing, Seller will secure and keep in force, at its sole cost and expense, the following types of insurance: (a) workers' compensation statutory insurance as required by the state or states in which Seller or its subcontractors perform this Order; (b) employers' liability coverage with limits of at least \$1,000,000 each accident; (c) commercial general liability ("**CGL**") insurance on an occurrence basis (including coverage for premises, operations, broad form property damage, products/completed operations, independent contractors, contractual liability covering this Order as an "insured contract," independent contractors' liability, personal/advertising injury and work performed for Seller by others) with limits of at least \$3,000,000 per occurrence for bodily injury

and property damage; (d) business automobile liability insurance on an occurrence basis with limits of at least \$2,000,000 combined single limit for bodily injury and property damage, for all owned, non-owned, leased, hired or borrowed vehicles; and (e) excess liability insurance on an occurrence basis with respect to each of the employers' liability, CGL and business automobile liability policies described above, in an umbrella form, with limits of at least \$3,000,000 per occurrence.

Buyer will be named as additional insured with respect to all liability coverages, except statutory workers' compensation. The workers' compensation policy listed above will contain waiver of subrogation in favor of Buyer where allowed by law.

The insurance policies required by this Section must be written by an insurance company that is authorized to do business in the states where Seller performs any aspect of this Order and that has an AM Best rating of A- or better. Upon request, Seller will deliver to Buyer a certificate of insurance for all coverage required in this Section. Seller will provide Buyer prompt advance written notice if its insurer intends to cancel or materially alter such policies. These insurance requirements are minimum coverage requirements and are not a limitation on Seller's liability. The insurance procured by Seller under this Section will be primary insurance and noncontributing with respect to any other insurance maintained by Buyer.

12. OWNERSHIP OF IP

Any intellectual property created solely as a result of this Order ("IP") will be deemed "work made for hire" and, as such, Buyer's sole and exclusive property. If any IP does not qualify as "work made for hire," then Seller hereby assigns all such IP to Buyer, including all intellectual property rights and other rights in such IP. Seller expressly waives any rights of attribution, integrity and prior use that Seller may have in the IP or any related works, and such waiver will apply to any and all uses of or changes to the IP and such related works. Seller will perform, at Buyer's request and expense, any act (including, without limitation, executing any documents) for Buyer to fully enjoy and protect IP, with title vested in Buyer.

13. LICENSE

G&S may include intellectual property rights owned or licensed by Seller or a third party ("**Seller's Materials**"). Seller hereby grants Buyer an irrevocable, perpetual, non-exclusive, worldwide, fully paid-up, royalty-free license to use Seller's Materials, including applicable software, to enable fully Buyer's use of G&S as contemplated by this Order.

14. CONFIDENTIALITY; PUBLICITY

"**Confidential Information**" means (i) all non-public information of Buyer or its affiliates provided to Seller or its representatives, in any form in connection with this Order; (ii) all Specifications or other documents prepared by Seller in connection with this Order; and (iii) the fact that Buyer has contracted to purchase G&S from Seller and the terms and subject matter of this Order.

Without Buyer's prior written consent, Seller will not, and will cause Seller Personnel not to: (i) use Confidential Information for any purpose other than performing this Order; (ii) disclose or publicize Confidential Information; or (iii) use, refer to or distribute the name or trademarks of Buyer or its affiliates. The foregoing provisions will be subject to the terms of any other written agreement executed by the parties relating specifically to confidentiality or non-disclosure.

15. SELLER PERSONNEL; INDEPENDENT CONTRACTOR

Seller and Seller Personnel are serving as independent contractors and not as Buyer's employees, regardless of where they perform Services or any other work. Buyer will not be responsible for directing or controlling the daily activities and performance of Seller Personnel.

Seller will (a) be fully responsible for Seller Personnel, including, without limitation, all compensation and taxes related thereto and any Seller Personnel acts or omissions and (b) carry on its work at its own risk until work is fully completed and accepted (under Section 4). Seller will, and will cause Seller Personnel to, take all safety precautions and furnish and install all safeguards necessary for the prevention of accidents related to this Order.

16. ASSIGNMENT; SUBCONTRACTING

Seller will not assign or delegate (including, without limitation, subcontract) any rights or duties under this Order, without Buyer's prior written consent.

Seller's engagement or contract with any subcontractor will not create any contractual relationship between any subcontractor and Buyer. Any attempted assignment or delegation in violation of this Section will be void.

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES

Seller will use reasonable good faith efforts to employ and develop minority-owned business enterprises ("**MBE**") and women-owned business enterprises ("**WBE**") in connection with G&S and will provide Buyer with quarterly reports of all expenditures made by Seller with MBE and WBE suppliers in connection with G&S.

18. TERMINATION

In addition to Buyer's other rights and without liability, Buyer may terminate this Order, or any part of this Order, by providing Seller with written notice of termination under the following circumstances: (a) in the event Seller fails to cure a breach of this Order within 15 days after Buyer or its affiliate provides written notice of such breach; (b) if Seller becomes insolvent, is adjudicated bankrupt, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors or seeks protection from creditors under any Applicable Laws; or (c) at any time for any or no reason upon 30 days' prior written notice.

Upon the termination of this Order, Seller will immediately stop and cause all Seller Personnel to stop all performance under this Order. If applicable, and upon Buyer's request, Seller will ship to Buyer, at Buyer's expense, all Goods or materials held for use under the Order.

19. SURVIVAL; SEVERABILITY

The termination of this Order will not affect the following provisions (which will survive such termination): (a) Sections 7-22; (b) the provisions of this Order that by their terms state or evidence the intent of the parties that the provision survive the termination of this Order; and (c) the provisions of this Order that must survive to give effect to the provisions of this Order. If one or more of the terms of the Order are deemed void or unenforceable by law, then all other provisions will continue in full force and effect.

20. GOVERNING LAW; DISPUTE RESOLUTION

This Order will be deemed a contract for the sale of goods under the Uniform Commercial Code and be governed and interpreted by the laws of the state where Buyer's corporate headquarters is located, without regard to its conflict of laws provisions. State and federal venue and jurisdiction for any action relating to this Order will rest exclusively in the county where Buyer's corporate headquarters is located.

Prior to attempting to resolve any dispute by litigation: (a) the parties will attempt to resolve all disputes promptly by negotiation between executives with authority to settle the dispute; and (b) if the dispute is not so resolved, the parties will attempt to settle the dispute by mediation in the county where Buyer's corporate headquarters is located. Seller must commence any action against Buyer arising from this Order within one year from the date the claim accrues, after which any such claim not yet brought will be permanently barred.

21. DATA PRIVACY AND INFORMATION SECURITY

Seller (or where applicable its agents, employees or sub-contractors) will: (a) inform Buyer in a timely manner regarding any breaches that may impact Buyer or the integrity of Buyer's data; (b) by request or upon significant changes to the relationship, accommodate Buyer's information security assessments by providing information/documentation on related policies and practices; (c) adhere to industry acceptable practices regarding security policies/ guidelines/ standards (including physical security, onboarding and off-boarding resources, etc.); (d) remediate, within industry best practice time lines, security vulnerabilities that may impact Buyer; (e) inform Buyer in a timely manner of major changes in its data environment that may impact Buyer; (f) notify Buyer of any access it will have to Personal Information; (g) cooperate with Buyer in relation to any additional information security measures requested by Buyer. Seller shall engage in good faith negotiations with Buyer in relation to additional information security provisions where considered appropriate by Buyer.

The terms and conditions of the Applicable Privacy Policy will apply to Buyer's collection, use and processing of Personal Data and any Personal Data processed by Seller on behalf of Buyer in connection with the services. Applicable Privacy Policy is defined as: Buyer's United States Privacy Policy, currently available at <http://policy.pepsi.com/privacy> and Buyer's Europe Privacy Policy, currently available at <https://pepsicoprivacypolicy.com/>. "Personal Data" has the meaning assigned to it in the Applicable Privacy Policy. "Personal Information" has the meaning assigned to it in the Applicable Privacy Policy.

22. ENTIRE AGREEMENT

This Order, along with any documents attached to or incorporated into this Order, constitutes the entire agreement between the parties and replaces any contemporaneous oral or written communications between the parties related to the subject matter of this Order.

Subject to Section 2, no term or condition of this Order may be changed or modified (including by the parties' course of dealing, performance or trade practices) except in a writing that refers specifically to this Order and is signed by the parties. Any waiver is effective only in that instance and does not operate as a waiver on any future occasion.