

# RAILWORKS – CONDITIONS OF PURCHASE – UNITED STATES

This Purchase Order consists of the terms specified on the face of the Purchase Order, the Conditions of Purchase set forth herein, and any plans and specifications referenced herein (collectively, the "Order"). In the event of any conflict between the terms specified on the face of this Order and the Conditions of Purchase, the terms specified on the face of this Order shall prevail. In the event of any conflict between the terms specified in the plans and specifications referenced herein and the terms specified on the face of this Order, the terms specified on the face of this Order shall prevail. No modifications of the terms and conditions of this Order shall be valid and binding upon the Purchaser unless agreed to in writing signed by an officer or authorized employee of Purchaser (email is sufficient). No conditions stated by Vendor in accepting this Order shall be binding on Purchaser if in conflict with, inconsistent with or in addition to the terms and conditions of the Order, unless such conditions are expressly accepted in writing signed by an officer or authorized employee of Purchaser (email is sufficient). Subject to the foregoing, if any provisions comprising this Order are inconsistent or conflicting, the more demanding or stringent provision governing the scope, liabilities or obligations of Vendor relating to the performance of the Work shall govern. If this Order is presented to Vendor and Vendor commences performance of the Work under the Order, performance of the Work is sufficient to make the terms and conditions of the Order binding on Vendor.

## 1. PRICE

1.1 Vendor shall furnish all labor, skill, materials, equipment, tools, supplies, services, permits, certifications, insurance, documentation and all other things necessary or incidental to perform the work set forth on the face of the Order ("Work"). All prices are firm and there will be no increase in the price for any reason whatsoever unless otherwise specifically set forth herein or agreed to in writing by an officer or authorized employee of Purchaser.

1.2 The parties hereto are aware of the possibility of increases in the price of labor, materials and other items of cost. Nevertheless, no claims shall be made by the Vendor for an increase in the price of the Work. If the cost to the Vendor of any labor, materials or other items of cost involved in the furnishing of the Work called for by this Order is increased for any reason whatsoever, it is agreed and understood that any and all risks of increase in the price of labor, materials and other items of cost have been contemplated by the Vendor and have been taken into consideration in arriving at the price set forth herein. It is further agreed that no claim for such increase shall be made even though it may be asserted by the Vendor, with or without cause, that the Vendor has been brought into a period of increased cost of labor, materials or other items of cost by reason of any delays or interferences of the Purchaser, the owner of the project to which this Order relates (the "Owner") or the general contractor of said project (the "General Contractor", if other than Purchaser) or for any other cause whatsoever.

1.3 Purchaser shall issue payment to Vendor within 45 days of receipt of the Work, or receipt of an invoice for the Work, whichever is later, if the Work is performed in accordance with the Order and if Vendor has supplied all documentation, including, but not limited to, lien waivers, required by Purchaser.

## 2. COMPLIANCE WITH SPECIFICATIONS, ETC.

All Work to be furnished hereunder shall be in strict accordance with the project plans and specifications contained or referenced in the Order,

and to samples, drawings and designs approved or adopted by Purchaser and to the terms, conditions and specifications of the prime contract ("Prime Contract") between the Purchaser (or General Contractor, if applicable) and the Owner, and the requirements of which Prime Contract relating to the Work including, but not limited to, provisions regarding alternative dispute resolution, arbitration, notices of claim and delays and liquidated damages, are hereby incorporated and made a part of this Order.

2.1 Vendor shall prepare and submit for approval to Purchaser all shop drawings, cuts, diagrams and samples as may be required. When requested by the Purchaser or required under the Prime Contract, the Vendor shall conduct the necessary tests to furnish the necessary reports and obtain the necessary approvals requested by the Purchaser and the same shall be performed at the Vendor's sole cost and expense. The approval of any Vendor submittal shall not be deemed to authorize deviations, substitutions, or changes in the requirements of this Order.

2.2 When samples of materials are to be furnished to Purchaser in accordance with the terms hereof and the samples are not acceptable to the Purchaser, or the Owner (or General Contractor, if applicable) or to the architect and/or engineer representing same, then the Purchaser may thereupon terminate the Order without obligation to make any payment hereunder, or at all, to the Vendor.

## 3. TITLE AND RISK OF LOSS

3.1 Vendor will pack, protect and deliver the Work in the most secure and appropriate manner at Vendor's sole cost and expense. All risks of loss of or damage to Work to be delivered by Vendor hereunder shall be upon Vendor, and title to said Work shall remain with Vendor until the Work is accepted by Owner or delivered to the destination designated by Purchaser, whichever shall be later.

## 4. TIME OF ESSENCE

4.1 Time is of the essence of this Order. Any drawing required to be submitted by Vendor for Purchaser's approval and any Work to be delivered by Vendor must be delivered or submitted by Vendor in strict accordance with the time stated in the Order or as otherwise requested by Purchaser. In addition to any other remedies of Purchaser herein, if delivery has not been timely made or if Vendor has fallen behind schedule, Purchaser, upon written notification to Vendor, may require Vendor to work on an overtime, or premium schedule, and further may require the Work to be shipped expeditiously either by special overland transportation and/or air freight from point of manufacture to the project site. In such event, Vendor shall be solely responsible for all additional over time or premium costs or transportation expenses and all other expediting related expenses.

4.2 Vendor shall not be liable for failure to deliver, or for delays in delivery, occasioned by war, riots, floods, strikes by common carrier, or material default of the Purchaser. In any such event, the Vendor must give notice within two (2) days after the occurrence of the event (or such period under the Prime Contract, if shorter), failing which the Vendor shall not be entitled to the relief set out in this clause 4.2. To the extent provided to Purchaser under the Prime Contract (or other contract, if applicable), the time for delivery shall be extended for a period equal to the duration of the event or such period provided under the Prime Contract (or other contract, if applicable) if shorter. Such extension of time shall be the only remedy of the Vendor for any such delay. In no event shall the Purchaser be responsible or liable to the Vendor for any damages, costs or expenses

whatsoever arising out of such delay, or any other delay whatsoever.

## 5. INSPECTIONS, TESTS, ETC.

5.1 Purchaser shall have the right to inspect and test all Work under this Order at all times and places during manufacture. Vendor shall furnish, without additional charge, cost or expense, reasonable facilities and assistance for safe and convenient inspection and/or testing. Vendor shall provide advance notice to Purchaser prior to factory testing and advance notice to Purchaser prior to shipment, in each case at least one week earlier than such notice must be provided by Purchaser under the Prime Contract or other applicable contract.

5.2 All Work delivered shall be subject to inspection and testing by Purchaser after delivery of said Work to the location provided for in the Order. Purchaser shall have the right to reject and refuse acceptance of Work that is not in accordance with the requirements of this Order. Work rejected due to nonconformance with the requirements of this Order shall, at the Buyer's sole option, be (a) returned to Vendor at Vendor's sole expense, including transportation both ways, promptly upon notification of rejection and Vendor shall bear all risk on rejected Work; (b) held by Purchaser for an equitable reduction in Price; or (c) repaired at Vendor's sole expense. Payment for any Work shall not constitute acceptance. Failure of the Purchaser to detect any deficiencies or defects in the Work during the course of any inspection or testing carried out by Purchaser shall not relieve the Vendor of any of its obligations under this Order. Acceptance by Purchaser shall not constitute acceptance as to latent or hidden defects, which were discovered upon reasonable inspection.

## 6. SHIPPING

Shipping instructions furnished by Purchaser shall be strictly complied with and shall be considered part of this Order. Vendor shall comply with shipping instructions provided on the face of the Order. To the extent the delivery date is not expressly fixed on the face of the Order, Vendor shall give Purchaser twenty-four (24) hours' notice prior to the delivery of any Work. Risk of loss or damage to the Work shall be upon Vendor until the Work is physically delivered to Purchaser at the destination set forth on the face of the Order, or such other destination otherwise agreed to in writing.

## 7. CHANGES

7.1 Purchaser may, at any time by written notice to Vendor, (i) make changes in the shipping or packing instructions, (ii) increase or decrease the quantity of products ordered, (iii) change the drawing or specifications and (iv) make changes in the delivery schedule (any of which is a "Change Event").

7.2 Vendor shall proceed promptly to make such changes in accordance with the terms of such written notice. If such changes cause an increase or decrease in the cost of performance of this Order or in the time required for performance, an equitable adjustment shall be made in the Order price or the delivery schedule and this Order shall be amended in writing accordingly, to the extent that Purchaser obtains an extension of time or additional compensation under the Prime Contract (or other contract, if applicable).

7.3 Any claim for adjustment under this clause must be asserted within five (5) days from the date of the written notice causing the Change Event (or such period under the Prime Contract, or other applicable contract, if shorter). In the absence of such notification, Purchaser shall not be obligated to consider Vendor's claim for an equitable adjustment. Notwithstanding any dispute regarding

any claim for adjustment, Vendor must continue performing all Work during the pendency of any such dispute.

## 8. WARRANTY

8.1 Notwithstanding Purchaser's inspection and acceptance of Work delivered, Vendor expressly guarantees and warrants that all Work furnished hereunder is merchantable, free from any defects (including latent defects) in design, materials and workmanship, and fully conforms to the plans and specifications of this Order and the requirements of the Prime Contract applicable to the Work, including any drawings or samples approved by the Purchaser, and that the Work is suitable for the use intended, and conforms to recognized commercial standards of quality and function ("Guarantee of the Work"). Purchaser's approval of Vendor's drawings or samples shall not release Vendor from the aforesaid guarantee and warranty obligations. The Vendor's guarantee and warranty shall extend for one year from the date of substantial completion of the project, or such period as shall be set forth in the Prime Contract, whichever period shall be longer. Upon receiving written notification from the Purchaser that Work ordered hereunder is defective under Vendor's guarantee and warranty, Vendor shall replace such Work or correct the defect therein at no cost to the Purchaser, in the discretion of the Purchaser. Vendor shall indemnify and hold harmless Purchaser and Owner from any and all costs, damages, claims, personal injuries, and property damage arising from a failure of the Work to comply with Vendor's guarantee and warranty. Purchaser may at its option hold such Work at Vendor's expense for Vendor's disposition or shall return the defective Work, in which event all cost and expense of handling and freight charges incurred for the return of defective Work will be paid by Vendor. If defects, including latent defects, are discovered in the Work, whether during or after the warranty period referenced above, the Vendor will correct the defect or provide replacement equipment and materials promptly upon notification or instruction by Purchaser. Vendor will be responsible for all costs associated with any repairs or replacements under this section and will indemnify and save harmless the Purchaser and Owner from any resulting costs, losses, or damages. Other work removed or damaged as a result of or related to a breach of the guarantee or warranty herein shall also be repaired or replaced by the Vendor without additional payment by the Purchaser.

8.2 The Vendor represents that it has taken all reasonable steps to inform itself about the Work, which may include visiting the project site and reviewing all relevant drawings and specifications. Vendor represents that nothing that is reasonably foreseeable will prevent its performance of the Work.

8.3 Purchaser's rights and remedies under this section shall be in addition to any other rights and remedies that Purchaser may have under this Order or under applicable law.

8.4 These warranties shall survive inspection, acceptance, and payment of and for said Work. The provisions set forth in this Clause 8 shall survive the termination, cancellation or expiration of this Order.

## 9. PURCHASER'S REMEDIES

9.1 Termination for Default -- Purchaser may terminate this Order or any part thereof by written notice of default under any of the following circumstances:

9.1.1 If Vendor refuses or fails to make deliveries or perform the Work within the time specified or extensions thereof agreed to in writing by Purchaser or otherwise fails to perform the Work timely, so as to endanger

## RAILWORKS – CONDITIONS OF PURCHASE – UNITED STATES

performance of this Order in accordance with its terms (as determined by Purchaser in its sole discretion);

9.1.2 If Vendor fails to comply with any provision of this Order and does not commence and continue correction of any such failure within a period of three (3) days (or such other period specified in the Prime Contract, if shorter) after notice from Purchaser specifying such failure; or

9.1.3 If Vendor becomes insolvent or is subject to any law relating to bankruptcy, insolvency or relief from its creditors.

9.1.4 In the event of such termination, Purchaser may purchase any of the Work subject to this Order elsewhere or secure the performance of the Work from other sources and Vendor shall be liable to Purchaser for any loss, damage, liability or expense sustained by Purchaser as a result of having to acquire any of the Work elsewhere, including reasonable overhead, profit, attorneys' fees, and costs. Further, Vendor shall indemnify Purchaser for any liquidated damages that may be assessed against Purchaser as a result of Vendor's default. Purchaser shall have the right to withhold any payment to Vendor until the completion of the project and to offset against any amounts owed to Vendor for any loss, damage, liability or expense sustained by Purchaser or anticipated to be sustained by Purchaser in connection with said breach and/or termination.

9.2 Termination for Convenience - Purchaser may terminate this Order or any part thereof at any time, with three (3) days written notice to Vendor. In the event of such termination, Purchaser shall pay Vendor costs incurred by Vendor relating to Work already completed, delivered and accepted by the Owner. Vendor shall not be entitled to any other compensation whatsoever including, without limitation, any anticipatory or lost profits, costs incurred for Work not yet delivered and accepted by Owner or Purchaser, or other indirect or consequential damages pursuant hereto.

9.3 Other orders - Should there exist any other purchase orders or contracts between the Purchaser and Vendor, then, at the sole option of the Purchaser, (i) a breach of this Order may be considered a breach of any or all other purchase orders or contracts and (ii) a breach of any of those orders or contracts may be considered a breach of this Order. In that event, the Purchaser shall have recourse against the Vendor as set forth in this Section 9 on any and all other purchase orders or contracts and this Order, and the Purchaser may apply any monies due from it under any of said purchase orders or contracts toward its damages sustained hereunder, or vice versa.

9.4 Notwithstanding anything else to the contrary set forth herein, the remedies set forth herein shall be in addition to any other remedies available to the Purchaser in law or equity.

### 10. NO WAIVER

Failure of Purchaser to insist upon strict performance of any of the terms and conditions herein shall not be deemed a waiver of any rights or remedies that Purchaser shall have and shall not be deemed a waiver of any subsequent default in the terms and conditions hereof. The delivery or receiving of any Work under this Order or payment therefore shall not be deemed a waiver of any rights by Purchaser for any prior failure by the Vendor to comply with any of the provisions of this Order.

### 11. COMPLIANCE WITH LAWS AND OTHER REGULATIONS; INDEMNIFICATION

11.1 By acceptance of this Order, Vendor warrants that it shall comply with all union rules, to the extent applicable to the Work, including the manufacture, handling and

transportation of such Work and any objection by a union to the receipt or use of the Work shall constitute a proper basis for the Purchaser's rejection of the Work or the return of the Work and revocation of the sale, all at no cost to the Purchaser. Vendor further certifies that it has complied with and will comply with all applicable federal, state, local and municipal laws, ordinances and regulations, specifically including, but not limited to, civil rights and equal opportunity provisions thereof, and the performance of the Work complies with applicable prevailing wage, worker safety and other applicable labor and employment laws, and Vendor will supply to the Purchaser any and all certifications or other evidence of such compliance as requested by Purchaser. Vendor shall cooperate with any requests and/or audit requirements of Purchaser and shall ensure that its subcontractors and suppliers shall also cooperate with any requests and/or audit requirements of Purchaser. All Work pursuant to the terms of this Order must comply with all applicable laws, regulations, ordinances and other codes, including any Buy America and Buy American requirements.

11.2 If Vendor is a disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women-owned business enterprise ("WBE") or other disadvantaged business, Vendor represents and covenants at all times during the term of its performance of its Work hereunder as follows: (i) it is currently certified in good standing as D/M/WBE or other disadvantaged business, as applicable, with respect to the scope of Work it will perform hereunder and it has provided the applicable current certification to Purchaser prior to the execution of this Order; (ii) it shall perform a commercially useful function as required by applicable law, regulation and the Prime Contract; and (iii) it shall not subcontract any portion of its scope of Work without (a) Purchaser's written consent and (b) unless the entity to which it subcontracts is currently certified in good standing in the same category of D/M/WBE or other disadvantaged business, as applicable, as Vendor with respect to the Work. No D/M/WBE or other disadvantaged business can subcontract more than seventy percent (70%) of its Work under this Order under any circumstance. Vendor shall cooperate with Purchaser's compliance efforts surrounding D/M/WBE and other disadvantaged business programs, including, without limitation, filling out solicitation questionnaires and invoice affidavits at the request of Purchaser, and causing any of its subcontractors and suppliers to do the same. Vendor hereby agrees that it shall cooperate with any requests Purchaser may make to vet its operations and those of its subcontractors and/or suppliers. Vendor hereby acknowledges and agrees that its failure to comply with Purchaser's compliance efforts can result in delayed payment for its invoices, including, without limitation, the fact that no payments will be processed without an accompanying invoice affidavit, all as determined by Purchaser in its discretion.

11.3 Throughout this Order, the "Indemnified Party(ies)" means Purchaser, Owner, General Contractor, any party required to be indemnified pursuant to the Prime Contract, and any of their respective officers, agents, servants, employees, affiliates, parents, and/or subsidiaries. To the fullest extent permitted by applicable law, Vendor hereby assumes sole responsibility and liability for any and all actual, alleged, potential, and/or perceived risk of injury, liability, loss, damages (including, but not limited to, liquidated, consequential, and special), expense, delay, and/or additional costs incurred (including actions taken to avoid or contain the same) by the

Indemnified Parties of any kind or nature whatsoever, including, but not limited to: (i) death or injury to persons, whether they be employees of Vendor, its subcontractor, and/or its suppliers or otherwise; (ii) damage to all property (tangible, intangible, and otherwise); and (iii) damages arising from or related to, violations of applicable law, failure to perform any of Vendor's obligations under this Order, or Vendor's negligence in performing the Work, where such injury or damage arises out of or occurs in connection with, or is alleged to arise out of or occur in connection with, acts and/or omissions of Vendor and/or its subcontractors or suppliers of any tier in connection with the execution of the Work, or in preparation for the Work, or any extension, modification, or amendment to the Work by change order or otherwise, or in connection with the project. Should any claim related to the above be made or asserted, Vendor shall indemnify, save harmless, and defend the Indemnified Parties from and against any and all loss, cost, expense, delay (including liquidated damages), liability, damage, penalties, and fines, including but not limited to legal and expert fees and disbursements related thereto or incurred in enforcing this Order, which the Indemnified Parties, or any of them, may sustain, suffer or incur, directly or indirectly, but only to the extent arising out of or related to, or alleged to arise out of or relate to, Vendor's (or its subcontractors', laborers', suppliers', agents') own acts or omissions, whether sole or concurrent.

11.4 In furtherance and not in limitation of the indemnity provisions in this Order, Vendor expressly and specifically assumes the potential liability for actions brought by the Vendor's own employees or former employees against any Indemnified Party, and for that purpose Vendor specifically waives all immunity (statutory, constitutional, or otherwise) and limitations on liability under the workers' compensation act, or any other industrial insurance act, disability benefit act, or other employee benefit act of any jurisdiction that would otherwise be applicable in the case of such a claim. This indemnity obligation shall not be limited by the amount or type of damages, compensation or benefits payable by or for Vendor or a subcontractor or supplier under the workers' compensation, disability benefit or other employee benefits laws. The Vendor recognizes that this waiver of immunity was specifically entered into and was subject to mutual negotiation. Provided, however, Vendor's waiver of immunity extends only to the claims against any Indemnified Party, and does not include, or extend to, any claims by Vendor's employee directly against Vendor.

11.5 The indemnification obligation set forth herein shall survive the termination, cancellation, or expiration of this Order.

11.6 In the event any obligation of Vendor to any Indemnified Party pursuant to this Section 11 is triggered, Purchaser shall have the right to withhold from any payments, due or those that become due to the Vendor, an amount sufficient in its judgment to protect and indemnify the Indemnified Party from and against any and all such claims, loss, cost, expense, liability, damage, penalties, fines, or injury, including legal fees and disbursements.

11.7 In the event that the law of the state in which the project is located (or other applicable law) limits any obligation of the Vendor pursuant to this Section 11, then such obligation of the Vendor shall be enforced to the fullest extent permitted by applicable law, and this Section 11 shall be construed to conform to such law.

### 12. TAXES

All applicable taxes, levies, fines, customs duties and fees including, without limitation, value added taxes, sales taxes and/or use taxes are included in the Order price, and are the sole and complete responsibility of Vendor, and the Vendor shall be responsible for remittance of the same.

### 13. PATENT, COPYRIGHT AND INTELLECTUAL PROPERTY INDEMNITY

Unless the Order is for Work manufactured or produced according to a design for which Purchaser or the Owner (or General Contractor, if applicable) are responsible, the Vendor agrees to indemnify and save harmless and defend the Purchaser from any claim, damages, costs, expenses and liabilities on account of alleged violations or infringement of any existing or pending patent, copyright and/or intellectual property rights arising out of or in connection with this Order. The indemnification obligation set forth in the preceding sentence shall survive the completion, termination, cancellation or expiration of this Order. The Vendor agrees to pay all royalties and license fees on Work covered by this Order.

### 14. NO ASSIGNMENT; RESTRICTIONS ON SUBCONTRACTING

The Vendor shall not delegate any duties nor assign any rights or claims under this Order or for breach thereof, without prior written consent of the Purchaser and any such attempted delegation or assignment shall be void. The Vendor cannot utilize subcontractors or suppliers in connection with the Work without the written consent of Purchaser. If subcontractors or suppliers are approved by Purchaser, Vendor remains solely responsible for performance of the Work.

### 15. LAW GOVERNING

This Order shall be governed by and construed under the laws governing the Prime Contract, or, if no governing law is specified in the Prime Contract, under the laws where the Work is delivered.

### 16. COMPLETE CONTRACT; NOTICE

The Order sets forth the entire agreement between the parties hereto and supersedes all communications, representations, and agreements, whether oral or written, between the parties hereto with respect to the subject matter hereof. Nothing in this Order shall be construed to create a contractual relationship between persons or entities other than Purchaser and Vendor. All notices hereunder shall be in writing and sent by an established overnight mail service next day delivery, certified mail, return receipt requested or by facsimile or email followed by regular mail to the address and/or fax number of the respective parties stated herein. Notice shall be deemed given the next business day when delivered via overnight mail or if sent by facsimile transmission and three (3) business days after being post-marked for certified mail.

### 17. MISCELLANEOUS

Notwithstanding anything else to the contrary set forth in this Order, Purchaser's total liability in contract, tort (including negligence or breach), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Order shall not exceed the Order price. Notwithstanding anything to the contrary set forth herein, Purchaser shall have no liability for lost or anticipatory profits or consequential, indirect, exemplary, punitive or other special damages, whether arising in an action in contract, tort or otherwise, even if Purchaser had notice of the possibility of such damages.

## RAILWORKS – CONDITIONS OF PURCHASE – UNITED STATES

### 18. AUDIT

During the term of Vendor's performance of this Order and for ten years thereafter, Purchaser has the right to audit all of Vendor's records (excluding its cost information) in connection with this Order. This audit right is applicable to Vendor's subcontractors and suppliers. This right shall survive the completion, termination, cancellation or expiration of this Order.

### 19. BINDING DISPUTE RESOLUTION

19.1 In the event of any claims or disputes between Vendor and Purchaser arising out of or relating to this Order, the claim or dispute shall be decided by binding arbitration or, at Purchaser's election, in accordance with the dispute resolution provisions of the Prime Contract. The arbitration proceedings shall be held in accordance with the Regular Track Procedures (Section "R") under the American Arbitration Association's Construction Arbitration Rules and Mediation Procedures ("CARMP"), except where such Procedures differ with those prescribed by this section. Such arbitration shall take place in the state where the Work is delivered. The arbitration hearings shall, under no circumstances, exceed ten days. The arbitration shall be conducted before and be decided by a single arbitrator.

19.2 Vendor and its suppliers and agents hereby agree to be joined as parties in any arbitration commenced arising out of or relating to the Work, this Order, or the Prime Contract, and shall not object to being joined as parties in any such proceeding.

19.3 Vendor, its suppliers, and agents shall be bound by any decisions or determinations made by an arbitrator under this provision, or under the Prime Contract, by the applicable authorized person, board, court, arbitration, or other tribunal, to the extent such decisions or determinations concern or relate to issues that are involved in any claim or dispute between Purchaser and Vendor.

### 20. INSURANCE

20.1 Prior to commencing the Work, Vendor shall procure and maintain at its own cost and expense, the following insurance coverages: (a) **Commercial general liability insurance** (coverage shall be equivalent to the current ISO Occurrence Form) with limits of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate, and the deductible or self-insured retention shall not exceed \$100,000. Vendor shall not provide commercial general liability coverage on a "claims made" basis. The Vendor's commercial general liability aggregate limit shall be on a per project basis and shall include Bodily Injury, Property Damage, Products and Completed Operations, Personal Injury and Advertising Injury, and Contractual Liability insurance against the liability assumed in this Order. Coverage shall be maintained without interruption until date of project completion and acceptance by Purchaser, except for Products and Completed Operations coverage, which shall be maintained for the period of time during which a claim arising from or relating to this Order may be asserted against Purchaser (i.e., the applicable statute of limitation or statute of repose, if applicable), but in all cases shall be maintained for no less than three (3) years from the date of project completion. If the Vendor performs any Work within 50 feet of any railroad-owned property or that affects any railroad bridge, trestle, tract, roadbed, tunnel, underpass or crossing, then Vendor's insurance shall include coverage for work within 50 feet of a railroad (the railroad exclusion must be deleted). Purchaser may also require Vendor to purchase railroad protective liability insurance. (b) **Commercial automobile liability insurance**, but only if the Vendor

performs any Work on the project site, or any location that is owned or under the control of Purchaser, Owner, or General Contractor (collectively the "Project Site") or is transporting Work to or from the Project Site. Vendor shall procure at least \$2,000,000 combined single limit for bodily injury and property damage (per occurrence), covering all vehicles owned, leased, hired, non-owned, or used by the Vendor or its employees (including coverage for loading and unloading). (c) **Worker's compensation insurance** for Vendor's employees in an amount not less than the statutory limits of the state in which the Work is performed. (d) **Employer's liability insurance** including, but not limited to, bodily injury by accident with limits not less than \$2,000,000 per accident; bodily injury by disease with limits not less than \$2,000,000; bodily injury by disease with limits not less than \$2,000,000 per employee. (e) **Professional liability insurance**, but only if the Vendor's Work involves the rendering of any professional service, either directly by the Vendor or through any subcontractor, consultant, or otherwise for whom the Vendor may be legally responsible. Vendor shall procure \$5,000,000 per occurrence or claim and \$5,000,000 in the aggregate. Vendor shall be required to purchase Technology Errors and Omissions insurance if the Vendor provides technology goods, products, or services, or indirectly provides such goods, products, or services through any subcontractor, consultant, or otherwise for whom the Vendor may be legally responsible. (f) **Excess liability insurance**. If the price of this Order, including any changes to the Order, exceeds \$1,000,000 Vendor shall provide excess insurance in an amount not less than \$10,000,000 per occurrence and \$10,000,000 aggregate. Excess liability insurance shall be written as excess of Vendor's Employer's Liability, Commercial General Liability, and Commercial Automobile Liability insurance. In the event that any primary aggregate has been eroded or exhausted due to the payment of claims, it shall be a provision of the excess policies to "drop down" and provide liability coverage excess of any reduced underlying limits of insurance or, provide first dollar coverage in the event of the exhaustion of the underlying limits. Purchaser expressly reserves the right to require Vendor to procure excess liability insurance, regardless of Order price. (g) All other insurance required by law.

20.2 All insurance coverage shall remain in effect until completion and final acceptance of the Work by Purchaser, except for Products and Completed Operations coverage, which shall be maintained for the period of time during which a claim arising from or relating to this Order may be asserted against Purchaser (i.e., the applicable statute of limitation or statute of repose, if applicable), but in all cases shall be maintained for no less than three (3) years from the date of project completion. If Vendor fails to purchase and maintain the required insurance, Purchaser shall have the right, but not the obligation, to purchase and maintain the insurance for and in the name of Vendor and Vendor shall pay the cost thereof, or Purchaser may deduct the premiums for insurance from any amounts due to Vendor, and Vendor shall furnish all necessary information to make effective and maintain such insurance. Vendor further agrees that in the event of such failure to procure and maintain insurance, Vendor shall be liable for all amounts which would have been payable pursuant to the insurance required by this Order. Vendor shall name Purchaser, Owner, and General Contractor (if applicable) as additional insureds on each policy, except worker's compensation and professional liability insurance (if applicable), throughout the ongoing

and completed operations period. Purchaser reserves the right to specifically require that Vendor name additional parties as additional insureds. The coverage to be provided to the additional insureds shall be for all liability arising out of the Work. The coverage available to the additional insureds shall be primary to and non-contributing with any other insurance available to an additional insured, and the policies shall so specifically state. Vendor will submit a certificate of insurance and a copy of endorsements to the insurance policies listing all parties required to be named by Purchaser as additional insureds. Vendor agrees to provide Purchaser a certified copy of all insurance policies upon request.

20.3 In addition to, and not in limitation of, the insurance requirements set forth in this Section 20, Vendor hereby agrees to procure and maintain insurance coverage that (i) is consistent with standard industry practices for the supply, performance, and value of the Work covered by this Order and (ii) is sufficient in amount, coverage, and scope to protect the Indemnified Parties from any and all claims and losses and fulfill Vendor's indemnity obligations hereunder. Purchaser expressly reserves the right to require Vendor to procure additional coverages depending on the nature of the Work.

Vendor further agrees to require its subcontractors, suppliers, agents, carriers, and any other entity it engages in connection with the Work, where their work will take place on or at the Project Site, to procure and maintain insurance coverage that is (i) consistent with standard industry practices for the supply, performance, and value of the Work and is (ii) sufficient in amount, coverage, and scope to protect the Indemnified Parties from any and all claims and losses. Such coverage shall include, at a minimum, commercial automobile liability insurance (with at least \$750,000 per occurrence combined single limit for bodily injury and property damage), commercial general liability insurance (with limits of at least \$1,000,000 per occurrence and \$2,000,000 aggregate), and worker's compensation for their employees in an amount not less than the statutory limits of the state in which their work is performed. Such policies shall be subject to the terms and conditions contained in Article 20 (including, but not limited to, the waiver of subrogation in Section 20.4).

20.4 Vendor hereby waives all rights of recovery from Indemnified Parties and any other required parties, including, but not limited to, rights of subrogation, with respect to any matter, claim, or suit that is to be covered by insurance to be maintained by Vendor pursuant to the Order and Prime Contract. Each of Vendor's insurance policies shall contain a waiver of subrogation in favor of Purchaser, Owner, General Contractor, and any other required parties. Vendor shall be responsible for satisfying all deductibles and/or self-insured retention amounts incurred by Vendor or any Indemnified Party. Purchaser reserves the right to withhold any amounts due under this Order to reimburse Purchaser or any other additional insured for any deductible or self-insured retention paid. Vendor agrees that the amount of insurance available to Purchaser and the additional insureds shall be for the full amount of the loss up to policy limits of liability and shall not be limited to the minimum requirements of the Order. In the event any policy provided in compliance with this Order states that the insurance afforded to an additional insured will not be broader than that required by contract, or words of similar meaning, Vendor agrees that nothing in this Order is intended to restrict or limit the breadth of such insurance. Vendor further agrees to provide endorsements on its insurance

policies that shall state the foregoing; however, Vendor's failure to provide such endorsement shall not affect Vendor's agreement hereunder.

20.5 Wording such as "will endeavor to notify" and "failure to mail such notice shall impose no obligation or liability of any kind upon the insurer" is not acceptable and must be deleted from Vendor's certificate(s) of insurance and/or insurance policies. Renewal of expiring policies shall be confirmed by renewal certificates forwarded to Purchaser at least seven (7) days prior to coverage expiration. Any failure on the part of Purchaser to pursue or obtain the evidence of insurance required by this Order and/or failure of Purchaser to point out any noncompliance of such evidence of insurance shall not constitute a waiver of any insurance requirements.

### 21. SAFETY

Purchaser contracts with Vendor as an independent contractor to provide all labor, materials, equipment, and incidental services necessary or incidental to perform this Order, subject as an employer to all applicable unemployment compensation, occupational health and safety, or similar statutes. In the event that Vendor, its employees, or agents are required to come onto a Project of Purchaser in connection with the performance of this Order, Vendor shall comply with all current safety requirements of Purchaser, as well as all laws as defined in Section 10.

### 22. EQUAL OPPORTUNITY

**Vendor and Purchaser shall 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 covered prime contractors and subcontractors 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.**

### 23. JOINT DRAFTING

Purchaser and Vendor expressly agree that this Order was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Order shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

### 24. SEVERABILITY CLAUSE

If any portion of this Order is found to be invalid or unenforceable, the same shall not affect the validity or enforceability of the remainder of the Order.

### 25. AUTHORIZED PERSONNEL

The term "Authorized Personnel," as used in the Order Acknowledgment, shall be defined as follows: the President of RailWorks Corporation, an Executive Vice President of RailWorks Corporation, or a lawyer in RailWorks Corporation's Office of General Counsel.