

# Terms and Conditions – United States



This Purchase Order ("Order") consists of the terms, specified on the face of this Order, the Conditions of Purchase set forth below and any plans and specifications referenced herein. 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 in writing (including electronic signature) by an officer or authorized employee of Purchaser. 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 contained herein, unless such Vendor conditions are expressly accepted in writing (including electronic signature) signed by an officer or authorized employee of Purchaser. Subject to the foregoing, if any provisions comprising this Order are inconsistent or conflicting, the more demanding provisions shall govern. Vendor shall be responsible for and/or obligations of Vendor relating to the performance of the Work shall govern. If this Order is presented to Vendor and it commences performance, that is sufficient to make the terms and conditions of this Purchase Order binding on Vendor.

## 1. PRICE

1.1 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. All materials, equipment, labor, services and/or supplies (collectively "Work") delivered pursuant to this Order shall be paid for at the Order price, notwithstanding any attempts by the Vendor to increase the price. 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 exceeds the amount 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 other 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.

## 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 the samples or 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 any necessary approvals of the Purchaser and the same shall be performed at the Vendor's sole cost and expense.

2.1 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 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 The 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 be notified immediately by Purchaser of 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 delay under any contract provided in 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, loss, 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 Vendor shall be subject to inspection and testing by Purchaser after arrival of said Work at the job site at which the Work is to be installed. Notwithstanding any inspection during manufacture or witnessed test at Vendor's plant, rejected Work shall be removed at the sole cost and expense of the Vendor, including transportation by way of promptly upon notification of rejection and Vendor shall bear all risk on rejected Work. Failure of the Purchaser to detect any deficiencies or defects in the Work during the course of any inspection or testing carried out by it shall not relieve the Vendor of any of its obligations under this Order.

## 6. CHANGES

6.1 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 product ordered, (iii) change the drawing or specifications and (iv) make changes in the delivery schedule (any of which is a "Change Event").

6.2 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 and/or the delivery schedule and this Order shall be amended in writing accordingly to the extent same is provided to Purchaser under the Prime Contract (or other contract, if applicable).

6.3 Any claim for adjustment under this clause must be asserted within seven (7) days from the date of the written notice effecting the Change Event or such other time period as may be set forth in any 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. For the avoidance of doubt, notwithstanding any dispute regarding any claim for adjustment, Vendor must continue performing all Work during the pendency of any such dispute.

## 7. WARRANTY

Notwithstanding Purchaser's inspection and acceptance of the Work delivered by Vendor, Vendor warrants and warrants that all Work furnished hereunder is merchantable, free from any defects (including latent defects) in design, materials and workmanship and fully conform to the plans and specifications of this Order and the requirements of the Prime Contract, including any drawing 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. Purchaser's approval of Vendor's quotes 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 delivery, or such period as shall be set forth in the Prime Contract, whichever period shall be longer, and shall be in full satisfaction of any other express or implied obligations of the Vendor, under this Order or under applicable law. 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 shall correct the defect or provide replacement equipment and materials promptly upon notification or instruction by Purchaser. The Vendor will be responsible for all costs associated with such repairs and replacements and will indemnify and save harmless the Purchaser and Owner from any resulting damages to their work removed or replaced due to such defects, or in making good such defects, will also be made good by the Vendor without additional payment by the Purchaser. The Vendor has visited the project site and reviewed the drawings and specifications and warrants its performance of the Work. The provisions set forth in this Clause 7 shall survive the termination, cancellation or expiration of this Order.

## 8. PURCHASER'S REMEDIES

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

8.1.1 If Vendor refuses or fails to make deliveries on time or the Work within the time specified or extensions thereof agreed to in writing by Purchaser;

8.1.2 If Vendor fails to comply with any of the other provisions of this Order, or so fails to make progress as to endanger performance of this Order as determined by Purchaser in its discretion; or if the Purchaser in its discretion) and does not cure any such failure within a period of seven (7) days (or such other period specified in the Prime Contract, if

shorter) after notice from Purchaser specifying such failure; or

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

8.1.4 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 the Purchaser for any loss, damage, liability or expense sustained by Purchaser as a result of having to acquire any of the Work elsewhere. 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.

8.2 Termination for Convenience - Purchaser may terminate this Order or any part thereof at any time by written notice. 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. For the avoidance of doubt, Vendor shall not be entitled to any other compensation or payment, including, without limitation, an 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.

8.3 Other orders - Should there exist any other orders or contracts between the Vendor and 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 other orders or contracts may be considered a breach of this Order. In the event of such termination, the Vendor shall have recourse against the Vendor as set forth in this Section 8 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.

8.4 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.

## 9. 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 constitute a waiver of any subsequent default in the terms and conditions hereof or the delivery or receiving of any Work under this Order or payment therefor 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.

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

10.1 By acceptance of this Order, Vendor warrants that it shall comply with all applicable union rules and regulations, the laws, regulations, ordinances, and 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 to the location 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 of the law, and that it complies with 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 the 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/or Buy American requirements.

10.2 If Vendor is a disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), or other disadvantaged business ("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 determined by 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 (x) Purchaser's written consent and (y) 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 approved by 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 that Purchaser may make to visit 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 payments to Vendor, including, without limitation, the fact that no payments will be processed without an accompanying invoice affidavit, all as determined by Purchaser in its discretion.

10.3 Vendor shall indemnify and hold harmless all and defend and defend its subcontractors from all costs, expenses, liabilities or penalties arising from (i) Vendor's breach of these representations and covenants and/or (ii) in connection with this Order and/or the Work.

The indemnification obligation set forth in the preceding sentence shall survive the termination, cancellation or expiration of this Order.

## 11. 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 prices and are the sole and complete responsibility of Vendor, and the Vendor shall be responsible for remittance of the same.

## 12. 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 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.

## 13. 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 shall not subcontract any portion of its 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.

## 14. LAW GOVERNING

This Order shall be governed by and construed under the laws governing the Prime Contract.

## 15. COMPLETE CONTRACT; NOTICE

The terms and conditions of this Order set forth the entire agreement between the parties hereto and supersede all communications representations and agreements, whether oral or written, between the parties hereto with respect to the subject matter hereof, and all communications 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 to have been given to the business day delivered via overnight mail or if sent by facsimile transmission and three (3) business days after being post-marked for certified mail.

## 16. 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 non-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 or tort, unless the Vendor or Purchaser had notice of the possibility of such damages.

## 17. AUDIT

During the term of Vendor's performance of this Order, Vendor shall, at the request of Purchaser, have 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.

## 18. DISPUTE RESOLUTION

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 a court of competent jurisdiction in accordance with the applicable law of this Order, as set forth in Section 14 hereof, or, at Purchaser's election, in accordance with the dispute resolution provisions of the Prime Contract. If the Prime Contract requires the arbitration of disputes, Vendor and its subcontractors and suppliers who are parties to this Order hereby agree to be joined as parties in any arbitration commenced arising out of or concerning the project and shall not object to being joined as parties in any such proceeding. Whether or not Purchaser elects to have the dispute decided in accordance with the Prime Contract, Vendor, its suppliers, subcontractors and its guarantors, surety, or sureties, shall be bound by any decisions or determinations made under the Prime Contract by the applicable authorized person, board, court, arbitrator or other tribunal relating to the same issues that are involved in a dispute between Purchaser and Vendor.

## 19. INSURANCE

19.1 Vendor agrees to purchase and maintain, at its own cost and expense, insurance coverage which is consistent with standard industry practices for the supply or performance of the Work of the nature and value of such Work covered by this Order. Such coverage shall include, but shall not be limited to, commercial general liability insurance, which policy shall include products and completed operations, and all other insurance required by law. The policies hereunder shall not be written on a "claims made" basis. Purchaser reserves the right to specify the policy limits required and to require that Purchaser, owner, and user of the Work be named as additional insureds. Vendor agrees to provide the Purchaser with a certificate of coverage and a copy of all applicable policies upon request. If Vendor fails to purchase and maintain the required insurance, Purchaser shall have the right to purchase and maintain the insurance for and in the name of Vendor and Vendor shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance.