



1. **ACCEPTANCE OF PURCHASE ORDER** Acceptance of this Purchase Order ("P.O.") shall be limited to the terms and conditions stated herein, and any additional or different terms, conditions, or instructions proposed by either party are unenforceable and of no effect unless expressly assented to in writing by both Parties. This P.O. shall be binding upon execution and delivery by Buyer and receipt of P.O. by Seller. Acceptance of this P.O. by Seller shall occur when (a) Buyer confirms receipt of the P.O. by Seller (which may include confirmation of receipt of email sent from Buyer to Seller), or (b) when Seller delivers to Buyer any of the materials or equipment or renders for Buyer any of the incidental services ordered.

2. **EXTENT OF PURCHASE ORDER.** Any incidental services performed by Seller under this P.O., shall be governed by the terms of this P.O. Nothing in this P.O. shall be construed to create a contractual relationship between persons or entities other than Buyer and Seller. Except as specifically provided herein, this P.O., including any documents attached or referenced herein, are exclusively for the benefit of the Parties and not for the benefit of any third-party. This P.O. represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

3. **CHANGES** Upon reasonable notice to Seller, Buyer shall have the right to make changes in the items, quantities or other information incorporated in this P.O., methods of shipment or packing, place of delivery, and time of delivery. The Price and Delivery Schedule, if any, shall be equitably adjusted if and to the extent substantiated by Seller and necessary to reflect the impact of any such changes. In such cases, this P.O. shall be modified in writing accordingly.

4. **SUBMITTALS** Along with the delivery of materials or equipment, at no additional cost, Seller shall promptly submit to Buyer any and all available manufacturer's warranties, product data and literature relating to such materials or equipment.

5. **SCHEDULE** Time is of the essence of this P.O. The Parties shall coordinate with one another with respect to the timing and delivery of the materials and equipment pursuant to this P.O. In the event the delivery schedule agreed to by the Parties cannot be met for any reason, Seller shall notify Buyer as soon as reasonably practical as to such delay.

6. **SHIPPING** Shipping instructions furnished by Buyer shall be strictly complied with and shall be considered a part of this P.O.. Seller shall endeavor to provide Buyer at least twenty-four (24) hours notice prior to the delivery of any materials or equipment. Any provisions for delivery of materials or equipment by installment shall not be construed as making the obligations of either Party severable. Risk of loss or damage shall be upon Seller until the materials or equipment are physically delivered to Buyer at the Project or other authorized destination, unless otherwise agreed to in writing and signed by Buyer, or if covered by project all risk or equivalent insurance.

7. **MATERIAL SAFETY DATA (MSD) SHEETS** Seller shall submit to Buyer all Material Safety Data Sheets, if applicable and as required by Law, for materials or substances sold to Buyer.

8. **INSPECTION** Except as otherwise provided in this P.O., all shipments shall be subject to final inspection by Buyer after receipt by Buyer at destination. Shipments shall be accompanied by detailed delivery tickets to assist Buyer in its inspection. Buyer must inspect all materials and equipment and advise Seller of any visible damage or shortfalls within five (5) business days of delivery; otherwise such materials and equipment will be deemed to be accepted. Should Buyer discover any damage or shortfalls, Buyer shall promptly report them to Seller. Materials or equipment not accepted due to

nonconformance with the requirements of this P.O. shall, at Buyer's option, be (a) returned to Seller at Seller's expense; (b) exchanged for replacement products; or (c) repaired at Seller's expense to the extent such repairs do not exceed the replacement cost of such materials or equipment. Incorporation of the materials or equipment into the Project, and subsequent inspection and acceptance by Owner / Architect, shall constitute acceptance by Buyer of such materials or equipment and incidental services, if any, subject to Seller's warranty obligations. Payment for any materials or equipment shall not constitute acceptance. Notwithstanding the foregoing, Buyer shall have the right to reject and refuse acceptance of materials or equipment that are not in accordance with specifications or information identified in this P.O. or Seller's warranty, if any, as provided pursuant to ARTICLE 8 or required by relevant Project specifications.

9. SUSPENSION FOR CONVENIENCE Should Buyer order Seller in writing to suspend, delay, or interrupt the performance of this P.O. for such period of time as may be determined to be appropriate for the convenience of the Owner and not due to any act or omission of Seller, then Seller shall immediately suspend, delay, or interrupt as ordered by Buyer.

9.1. TERMINATION FOR DEFAULT Should Seller fail to deliver items and materials or perform the incidental services required within the time provided under this P.O. or any mutually agreed upon extension of time, or should Seller fail to perform any of the provisions of this P.O. or fail to make progress so as to endanger performance of this P.O. in accordance with its terms, Seller may be deemed in default and Buyer may terminate this P.O. for default by providing written notice of the same. The rights and remedies of Buyer provided in this subsection shall not be exclusive and are in addition to any other rights and remedies provided by Law or under this P.O..

9.2. SELLER'S RIGHT TO TERMINATE Upon seven (7) days written notice, Seller may terminate this P.O. if (a) Buyer fails to submit payment for the material, equipment or incidental services; or (b) Buyer fails to take delivery of the material, equipment, or incidental services through no fault of Seller. Seller shall be entitled to recover all material, equipment, or incidental services as identified in article 0 of the Purchase Order and for any documented loss, cost, or expense in connection with such materials, equipment, or incidental services.

9.3. TERMINATION FOR CONVENIENCE Buyer may at any time, with seven (7) days written notice to Seller, terminate this P.O. for the convenience of Buyer. In the event of such termination for convenience, Buyer shall pay Seller as its entire and sole compensation its actual and reasonable costs of furnishing materials or equipment to the date of termination, plus five percent (5%) for restocking fees. In the event any termination of Seller for default under section 9.1 is later determined to have been improper, the termination shall automatically be deemed a termination for convenience, and Seller shall be limited in its recovery strictly to the compensation provided for in this article.

10. WARRANTY Seller assigns to Buyer any applicable vendor or manufacturer warranties or remedies. In addition to the foregoing warranties, Seller hereby expressly warrants that all materials or equipment covered by this P.O. shall be (a) fit and sufficient for the intended purpose for which such materials or equipment was manufactured; and (b) free and clear of all liens. In the event of a breach of such warranties, Seller shall (a) refund the Price, (b) repair, or (c) replace, at Seller's option and expense, any defective materials or equipment. Seller's warranty excludes remedies for defects or damages caused by ordinary wear and tear, use for a purpose for which the materials or equipment were not specified, improper or insufficient installation, operation, maintenance, storage, or abuse, and modification not performed by Seller. THE WARRANTIES IN THIS SECTION ARE EXCLUSIVE, AND SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES.

11. PAYMENT AND LIENS Payment for conforming material or equipment shall be made by Buyer in accordance with any terms of the P.O. and after a receipt by Buyer of Seller's invoice. Buyer shall pay Seller upon receipt of payment from General Contractor on the Project. Buyer shall not hold back any retainage from Seller, regardless of any agreements with the Owner or any third parties. If and when requested by Buyer, Seller shall promptly provide affidavits that all of Seller's suppliers have been paid,

and a release of all liens either by Seller or Seller's supplier and claims in a form reasonably acceptable to Seller and Buyer. Such releases or waivers of lien may be conditioned upon payment. In no event shall Seller be required to sign an unconditional waiver of lien or claim, either partial or final, for an amount in excess of what Seller has been paid or prior to receiving payment. Prior to final payment, Seller shall provide to Buyer copies of warranties, applicable manuals, and all other close-out documents required for the materials or equipment by this P.O.

12. **INSURANCE REQUIREMENTS.** Seller shall maintain appropriate insurance coverage, in accordance with best industry practices, with a reputable insurance company against all relevant losses, liabilities and indemnities that may arise in connection with the Order and Seller's operations. Buyer may specify additional insurance coverage requirements applicable to the Order. Such coverage shall not limit Seller's liability under the Order. On Buyer's request, Seller shall provide Buyer with a copy of the insurance certificate evidencing coverage.

13. **WAIVER OF CONSEQUENTIAL DAMAGES** Buyer and Seller waive claims against each other for consequential or special damages arising out of or relating to this P.O.; however, this waiver shall not apply to any claim for reimbursement or indemnification for any consequential damages one Party was required to pay to a third party as a result of an act or omission of the other party or their employees or agents.

14. **ASSIGNMENT** Except for assignment of proceeds, no assignment of this P.O. or of any right, obligation, or delegation of duty under this P.O. shall be made without the written consent of the other Party or their duly authorized agent. Any attempted assignment or delegation without such consent shall be void.

15. **WAIVER** Either Party's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege provided in this P.O., or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, or any right or privilege.

16. **GOVERNING LAW** This P.O. shall be governed by the Law in effect at the location of the Project.

17. DISPUTE MITIGATION AND RESOLUTION

17.1. **WORK CONTINUANCE AND PAYMENT** Unless otherwise agreed in writing, except for nonpayment by Buyer under the terms set forth in this P.O., Seller shall continue to provide materials, equipment, and incidental services under this P.O., maintain the Delivery Schedule, if applicable, during any dispute mitigation or resolution proceedings. If Seller continues to perform, Buyer shall continue to make payments in accordance with this P.O.

17.2. **DIRECT DISCUSSIONS** If a dispute arises out of or relates to this P.O. or its breach, the Parties shall endeavor to settle the dispute in a cooperative manner, including resolving minor nonconformities that would give rise to economic waste. Within five (5) business days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions, shall conduct direct discussions and make a good faith effort to resolve such dispute.

17.3. **BINDING DISPUTE RESOLUTION** If the matter is unresolved after direct discussions, the Parties shall submit the matter to arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties.

17.4. The costs of any binding dispute resolution procedures shall be borne by the non-prevailing Party, including reasonable attorneys' fees, as determined by the adjudicator of the dispute.

17.5. **VENUE** The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.

17.6. MULTIPARTY PROCEEDING All parties necessary to resolve a matter shall be parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the material, equipment, or incidental services, if any, to provide for the joinder or consolidation of such dispute resolution procedures.

18. JOINT DRAFTING The Parties expressly agree that this P.O. was jointly agreed upon, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This P.O. shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.