

## PURCHASE ORDER - TERMS AND CONDITIONS

1. **ACCEPTANCE.** Acceptance of this purchase order may only be on the terms stated herein; any proposed additional or different terms are rejected. The duplicate copy of the purchase order must be signed by the Seller without change and returned immediately to the Purchaser. Upon Purchaser's receipt of the signed acknowledgement copy without change, the same shall become a contract. This contract is non-assignable by Seller. If Seller fails to return signed purchase order, shipment against this order will constitute Seller's acceptance of all terms and conditions contained herein and this purchase order shall become a binding contract.
2. **PACKING.** All materials shall be suitably packed, marked and shipped in accordance with the requirements of common carriers in a manner to secure lowest transportation costs and to reasonably safeguard against damage or injury in shipment. Where packing instructions have been issued by Purchaser, Seller shall comply with same in all respects. All packing shall be done at Seller's expense.
3. **DELIVERY SCHEDULE.** Deliveries are to be made in quantities and at times specified in this contract or in schedules furnished by Purchaser. Purchaser may from time to time change delivery schedules or direct temporary suspension of scheduled shipments. Any modifications in the delivery schedule are to be agreed to in writing between Seller and Purchaser.
4. **DELAYS.** Seller shall not be liable for delays or defaults in deliveries resulting from causes completely beyond its control and without its fault or neglect. If Seller has reason to believe that delivery will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to Purchaser. Purchaser reserves the right to cancel all or any part of the undelivered portion of this order if Seller does not make deliveries as scheduled or if Seller breaches any of the terms thereof. If any part of the Order is cancelled, Seller shall be paid for all work performed and any materials manufactured and/or delivered. Seller shall be liable to Purchaser for damages caused by delays or defaults in delivery where the delays were caused by the Seller's negligence.
5. **WARRANTY.** Seller expressly warrants that all materials shall be of good and merchantable quality and free from defect and that all work shall be performed in good and workmanlike manner and that materials and work shall conform to drawings, specifications, samples or other description furnished or specified by Purchaser, including but not limited to specifications which are publicly available in an electronic database even if a hard copy is not provided by Purchaser. If Seller fails to timely remedy any defects or non-conformance, Purchaser reserves the right to cancel the contract and has right to full refund of all monies paid to seller for the defective goods. Purchaser shall hold the defective goods for Seller's instruction and at Seller's risk.
6. **INSPECTION.** All deliveries shall be made subject to Purchaser's inspection and rejection. Any material found to be defective or not in conformity with Purchaser's specifications will be held for Seller's instruction, at Seller's risk, and if Seller so directs, will be returned at Seller's expense. Purchaser shall have the option to require Seller either to refund the full invoice price thereof plus any transportation charges paid by Purchaser, or to replace such rejected material at Seller's expense.
7. **CHANGES.** Purchaser reserves the right at any time, to make changes in the specifications as to material and/or work covered by this contract. Any difference in price or time for performance resulting from such changes shall be equitably adjusted and this contract modified in writing accordingly.
8. **SET-OFF.** Purchaser shall be entitled at all times to set-off any amount owing from Seller to Purchase against any amount due or owing to Seller with respect to this contract.
9. **MATERIAL FURNISHED BY PURCHASER.** Any material furnished by Purchaser in connection with this contract shall be deemed to be held by Seller upon consignment. Any material not used in the performance of this contract shall be returned by Seller to Purchaser at Purchaser's expense, and, if not accounted for or so returned, shall be paid for by Seller. All such materials shall be fully insured by Seller against loss, whether by fire, natural disaster, crime, acts of god or other calamities.
10. **PATENTS.** Seller agrees to defend, protect and save harmless Purchaser as successors, assigns, contractors, customers, and any other person connected with the work covered by this contract against any claims, actions or proceedings and against all damages for actual or alleged infringement of any patent by reason of the use of any material, equipment or apparatus furnished under this contract.
11. **INDEMNIFICATION.** To the fullest extent permitted by law, Seller shall indemnify, defend, save and hold harmless the Purchaser, and its respective shareholders, agents, partners, officers, employees, successors and assigns (hereinafter collectively "Indemnitees") from and against all allegations, claims, damages, losses, liability, or expenses, including attorneys' fees, caused in whole or in part by Seller, or its agents, servants, employees, subcontractors (specifically including delivery providers) or any other person for whose acts Seller is liable. This indemnification includes any (i) claims for breach of this Agreement, or (ii) claims for damages for bodily injury, sickness, disease, or death, or (iii) claims for, or damages to, or the loss of use of, tangible property, of any nature whatsoever, any of which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of work by the Seller, or any accident or occurrence involving Seller or Seller's Work, or the use, misuse, erection, maintenance, operation or failure of any machinery or equipment (including, but not limited to, motor vehicles, scaffolds, derricks, ladders, hoists, rigging supports, etc.) whether or not such machinery or equipment was furnished, rented or loaned with or without authorization by the Purchaser or its officers, employees, agents, servants or others, to the Seller. This indemnity does not extend to that part of any claims, damages, loss, liability or expenses arising from the negligent acts or omissions of the Purchaser. Seller agrees to purchase and maintain such insurance as will protect it and Purchaser, including contractual coverage. The foregoing indemnification includes, but is not limited to, any claims, damages, loss, liability or expense of any kind, which is in any way connected with the Work and which is based upon a breach of statutory duty or obligation on the part of the Purchaser where the Purchaser is not found to have committed a negligent act or omission. In any and all claims against the Purchaser or any of its agents or employees, by any employee of Seller, the indemnification obligations shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Seller under workers compensation acts, disability benefit acts or other employee benefit acts. If the foregoing indemnity is made void or otherwise impaired by any law controlling the construction thereof, such indemnity shall be deemed to conform to the fullest indemnity permitted by law. All indemnification provisions herein shall survive termination of this Agreement. The indemnity provided by the requirements contained herein shall be in addition to and not in limitation upon any rights of common law indemnity.
12. **INSURANCE.** Seller agrees to maintain the insurances listed in this Article. All of these policies shall name the Purchaser as an Additional Insured on a Primary and Non-Contributory basis. All certificates of insurance shall include a provision that the afforded coverages will not be amended, canceled, terminated, or reduced without thirty (30) days prior written notification. Purchaser may accept insurance with lower limits than those outlined below on a case by case basis, such acceptance will be in writing, if granted.
  - i. **Commercial General Liability (CGL)**  
With limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
  - ii. **Automobile Liability:**  
Business Auto Liability with limits of at least \$1,000,000 each accident. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
  - iii. **Commercial Umbrella:**  
Umbrella limits must be at least \$5,000,000. Umbrella coverage must include as insureds all entities that are additional insureds on the CGL. Umbrella coverage for such additional insureds shall apply as primary and non-contributing before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Seller.
  - iv. **Workers Compensation and Employers Liability:**  
Employers Liability Insurance limits of at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease. Where applicable, U.S. Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy. Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.
  - v. **Waiver of Subrogation**  
Each party hereby waives all claims it may have against the other arising out of or in connection with casualty loss or damage that would be insurable under the insurance described above to the extent the person suffering the loss or damage did or could have covered it by the insurance required under this Agreement. Each party shall cause its insurer to include a "waiver of subrogation" clause in or issue an endorsement to its policy recognizing and agreeing to this provision.

13. **SUBCONTRACTORS OF SELLER.** If Seller contracts with any third parties (Hereinafter called Subcontractor) to perform any whole or part of its obligations under this agreement, specifically including making delivery of the goods ordered herein, Seller shall cause such Subcontractor to be bound by all of the terms and conditions of this agreement. The Seller shall cause each Subcontractor to (1) procure and maintain insurance with the limits and coverage outlined in Article 12 of this agreement, written by companies authorized to do business in New York state and (2) cause the issuers of those insurance policies to name the Purchaser as Additional Insureds under each Subcontractor's comprehensive general automobile, and excess/umbrella liability policies. The additional insured endorsement included in each such Subcontractor's policies must state that coverage is afforded to all Additional Insureds with respect to any and all claims arising out of operations performed by or on behalf of Seller. If the Additional Insureds have other insurance applicable to the loss, such other insurance shall only apply, if at all, on an excess or contingent basis. The amount of each Subcontractor's insurers' liability under such insurance policy will not be reduced by the existence of such other insurance.
14. **INSOLVENCY OF SELLER.** Purchaser may forthwith cancel this contract in the event of the insolvency of the Seller: the execution by Seller of an assignment for the benefit of creditors; the filing by Seller of a voluntary petition in bankruptcy; the filing of an involuntary petition to have Seller declared bankrupt or the appointment of a receiver or trustee for Seller provided such involuntary petition or such appointment of a receiver or trustee is not vacated within thirty days from the date of filing or the date of such appointment as the case may be.
15. **PRICE REGULATIONS.** If any applicable price regulations are in effect at the time of the acceptance of this purchase order: Seller represents that the prices as charged herein are not in excess of the prices provided by such applicable price regulations, and in the event it is subsequently determined that the prices as charged herein are in excess of the prices provided in such applicable regulations. Seller agrees to refund such excess to Purchaser.
16. **WORK ON PURCHASER'S OR ITS CUSTOMERS' PREMISES.** If Seller's work under this contract involves operation by Seller on the Premises of Purchaser or one of its customers, the following additional conditions shall apply. Seller's work performed by seller expressly includes the delivery of materials.
- (a) **Liens** – That if at any time during the progress of the work. Seller shall allow any indebtedness to accrue for labor, equipment and/or materials which indebtedness has become a lien or liens upon said work, equipment and/or materials or upon the premises of the Purchaser or its customers or which may become a claim against Purchaser, Seller shall immediately, upon request from Purchaser, either pay such claim or indebtedness or cause such lien to be dissolved and discharged by giving a bond or otherwise and in case of Seller's failure so to do, Purchaser may withhold any money due Seller until such claim or indebtedness is paid or may apply such money towards the discharge thereof; or Purchaser may, in its absolute discretion, declare this order to be cancelled, take possession and control of the work, and complete the same or cause the same to be completed according to this contract.
- (b) **Risk of Loss** – Seller shall carry of the work at its own risk until the same is fully completed and accepted. In case of any accident destruction or damage to work and/or materials before final completion and acceptance of said work, Seller shall repair or replace the work and/or materials so destroyed or damaged at its own expense and to the satisfaction of Purchaser. If materials or equipment are furnished by others for installation or erection by Seller, Seller shall receive, unload, store and handle the same at the job site and be fully responsible therefore as though such materials and/or equipment were being furnished by Seller under this contract.
17. **During the performance of this contract, the Seller agrees as follows:**
- (1) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (3) The Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (4) In the event of the Seller's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Seller may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (5) The Seller will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (4) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
18. **COMPLIANCE WITH LAWS.** Seller shall comply, with all applicable State Federal and Local Laws, Ordinances, Rules and Regulations.
19. **MODIFICATION OR REVISION.** No modification or revision of this contract shall be effective unless agreed to in writing by authorized representatives of Seller and Purchaser.
20. **REMEDIES AND WAIVER.** The remedies specified herein shall be in addition to any other or further remedies provided to Purchaser by law. No waiver of a breach of any provision of this contract shall constitute a waiver of any other breach or of such provisions nor a relinquishment of any rights with respect to any other breach.
21. **ENTIRE CONTRACT.** This purchase order, accepted by Seller, together with all written modifications signed by both parties, shall constitute the entire contract between the parties and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby acknowledge and represent that they have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this purchase order, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this purchase order.
22. **ELECTRONIC SIGNATURES.** The exchange of copies of this Agreement and of signature pages by electronic means intended to preserve the original graphic and pictorial appearance of a document shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the parties hereto transmitted by electronic means shall be deemed to be their original signatures for all purposes.
23. **CONSTRUCTION.** This contract shall be construed and interpreted in accordance with the Laws of the State of New York. If any part of this agreement is struck down by a court of competent jurisdiction, (or arbitrator) the remaining parts shall continue in effect to the fullest extent permitted by law.
24. **ARBITRATION. Only at the Purchaser's sole option,** a dispute arising under this agreement shall be subject to binding arbitration. In the event that the Purchaser elects arbitration for dispute resolution, the parties shall select an arbitrator according to the rules of the American Arbitration Association.