

PO Terms and Conditions

1. **Purchase Order.** This Purchase Order constitutes Buyer's offer to Seller and becomes a binding contract upon the terms set forth herein when accepted by Seller either by acknowledgment or commencement of performance hereof. No revision of this Purchase Order shall be valid unless in writing and signed by an authorized representative of Buyer, and no condition stated by Seller or in Seller's form which is inconsistent with or in addition to the terms and conditions herein shall be binding unless expressly accepted in writing by Buyer.
2. **Warranty.** Seller agrees and warrants that the material, equipment, or services furnished hereunder will meet the specifications herein or otherwise required by the Upper-Tier-Contract to which Buyer is bound and shall be free from defects in material and workmanship. This warranty shall remain in effect so long as indicated in the Plans and Specifications contained in the Contract Documents. This warranty is in addition and supplemental to any warranties provided by law or elsewhere in this Purchase Order.
3. **Third Party Approval/ Cancellations.** All goods and services furnished under this Purchase Order shall be subject to approval of the architect, engineer, Buyer's customer, or any other party authorized under the Upper-Tier-Contract to reject Buyer's work, and Seller shall furnish the required submittal data or samples for such approval. In the event approval is not secured from Buyer's customer, or if the order to Buyer is canceled for any reason, cancellation of this Purchase Order shall occur automatically, without cancellation charges by Seller, and no obligation of any description whatsoever shall exist on the part of Buyer toward Seller, except to return any unused goods or to pay for all goods and services already used or furnished at the prices reflected in this Purchase Order.
4. **Inspection/Rejection.** All goods and services supplied hereunder shall be received subject to inspection and rejection. Defective or non-conforming goods will be held for Seller's account at its risk and if Seller so directs will be returned at Seller's expense. Rejected goods shall not be replaced without a new order. In addition, Seller shall reimburse Buyer for all costs reasonably incurred by Buyer resulting from or connected with the delivery of such defective or non-conforming goods. Payment for goods or services prior to inspection shall not constitute acceptance thereof, nor will acceptance remove Seller's responsibility for defects.
5. **Delivery.** TIME IS OF THE ESSENCE ON THIS PURCHASE ORDER. Seller shall take all necessary measures to ensure that it can meet Buyer's delivery dates; including but not limited to having sufficient number of qualified personnel and a stable supply of raw materials and equipment. Seller shall immediately inform Buyer if at any time it has reason to believe that it may not be able to meet the designated delivery dates and shall present Buyer with a remedial plan to rectify the inefficiency. If delivery of the goods or performance of services is not completed by the time or times specified herein, Buyer may (i) accept delivery or (ii) cancel the order in whole or in part without liability respecting any goods not delivered or services not performed. In either case, Buyer shall be entitled to indemnification as otherwise provided in this Purchase Order, and otherwise paid its assessed damages and other costs reasonably incurred on account of such delay.
6. **Delay.** Seller acknowledges that the goods or services to be provided hereunder are an integral part of the performance by Buyer under the Upper-Tier-Contract, and that late or defective delivery or performance by Seller may cause Buyer to default under the Upper-Tier-Contract, in which case Buyer shall be obligated to pay damages, including liquidated or consequential damages. Seller shall indemnify and hold harmless Buyer from all such damages and expenses, including attorney's fees, caused in whole or in part by Seller's late or defective delivery or performance. Buyer may require Seller to provide performance security such as a bond, line of credit or other security to ensure the performance of this agreement and/or the remuneration of any costs or damages incurred for Seller's failure to do so.
7. **Force Majeure.** Neither party shall be liable for any delay or failure to perform hereunder when such failure or delay is directly or indirectly, arising out of causes beyond the party's control; including but not limited to: fire, floods, accidents, civil unrest, acts of God, war, acts of terrorism, governmental interference or embargos, strikes, epidemics.
8. **Payment.** Payment shall be made pursuant to such terms and conditions as may be provided on the reverse side hereof or as otherwise specifically acknowledged in writing by both parties. Any payment terms contained in Seller's Proposal and/or Quote are rejected unless mutually agreed to in writing. Any agreed upon pre-payment, deposit or tiered payment schedules shall be subject to Seller providing Buyer adequate assurance of manufacture at Buyer's request.
9. **Return for Convenience.** Buyer reserves the right to return to Seller at the invoice price, all items which are regularly carried by Seller's stock. Buyer shall not be liable for restocking or any other charges levied by Seller for returned goods.
10. **Changes.** Buyer may at any time change the quantity or specifications for, or time of delivery of, the goods or services to be supplied hereunder. If such change causes an increase or decrease in the cost of performing or time required for performance of this Purchase Order, then unless such change is necessitated by the act of omission of Seller, an equitable adjustment shall be made in the price and/or delivery schedule, provided that no such change or adjustment shall be made without written consent of Buyer. In the event such change is made as a result of a change in the Upper-Tier-Contract, then such adjustment shall be determined in accordance with the applicable provisions of the Upper-Tier-Contract, and Seller shall be entitled to adjustment within a reasonable time after Buyer receives the same from the Upper-Tier Contractor or Owner.
11. **Taxes.** Unless otherwise indicated on the face of this Purchase Order, it is agreed that the purchase prices include all Federal, State, or local taxes imposed on account of the manufacture, sale or delivery of the goods or services furnished hereunder.
12. **Default/Termination.** If at any time Seller becomes insolvent, is unable to meet its current obligations or fails to perform in a timely manner or gives the Buyer reasonable grounds to believe that it will be unable to meet its obligations as scheduled and/or required by contract, or commits any other breach or default under the Purchase Order, Buyer may notify Seller that it is in default of its obligations herein and immediately terminate this agreement. In the event of such termination, Buyer shall have no further obligation under this Purchase Order and Seller shall be responsible for any additional expenses, costs and damages incurred resulting from said default and termination.
13. **Laws and Regulations.** Seller warrants that all goods sold, and services provided hereunder shall have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations to which the goods and services are subject, including OSHA. Seller shall execute and deliver such documents as may be required to effect or to evidence compliance. All laws and regulations required to be incorporated in agreements of this character are hereby incorporated herein by this reference. In addition, in the event this Purchase Order created a subcontract under a contract with the United States government, any state or any political subdivision thereof, any provisions which must under Federal, State and/or local law be included in such subcontracts shall also be deemed incorporated herein by this reference.
14. **Indemnity.** To the fullest extent permitted by law, Seller agrees to hold Buyer, Buyer's customer, upper tier contractors and Owner harmless from and to defend and indemnify it against all loss, liability, damage, cost and expenses arising from or incurred in connection with any claim caused in whole or in part by any act or omission of Seller, its agents or employees while executing this Purchase Order, or any claim arising out of the use of goods supplied hereunder. However, Seller shall not be liable for any such damages caused by the negligence of Buyer.

15. **Insurance.** Seller shall obtain and maintain general liability, products liability and other insurance for personal injury and property damage (and in the event this Purchase Order provided for performance of labor, workers compensation insurance) in the required statutory limits. Upon request of Buyer, Seller shall furnish Buyer acceptable proof of such insurance.
16. **Patent Infringement.** Seller shall indemnify, hold harmless and defend Buyer against any claims, damages, judgments, losses, liabilities and expenses arising out of any claim for infringement of any patent by reason of the purchase, sale, normal use, or other dispositions of any goods furnished hereunder.
17. **Assignment/Subletting.** Neither this Purchase Order nor any rights or obligations under it shall be assigned (whether by operation of law or otherwise) or contracted to third parties by Seller without Buyer's prior written consent. Any attempted assignment or subcontracting without Buyer's consent shall be void. Buyer's permission to subcontracting and/or assignment is expressly conditioned upon the subcontractor or assignee assuming all the obligations of Seller hereunder.
18. **Cancellation.** In the event of any proceeding by or against Seller in bankruptcy or insolvency or appointment of a receiver or trustee, or an assignment for the benefit of creditors of Seller, or in the event of a breach by Seller of any of the terms hereof, including any warranties hereunder, Buyer may cancel this and any or all other orders or contracts between Buyer and Seller, or reduce the quantity of goods to be delivered hereunder, without liability respecting goods not previously delivered or services not performed and without prejudice to Buyer's rights to damages or other remedies on account of such breach.
19. **Waiver.** The waiver of a breach of any provision of this Purchase Order shall not constitute a waiver of any other breach or of a subsequent breach of such provisions for the same or any other cause.
20. **Entire Agreement.** This Purchase Order constitutes the entire agreement with respect to the sale and purchase of the goods and/or services specified herein. No modification hereof shall be affected by the acceptance or acknowledgement of order forms of Seller specifying additional or different conditions, all of which are hereby objected to, and no modification shall be effective unless signed in writing by the party claimed to be bound thereby.
21. **EEOC/Federal Regulations.** As part of this Purchase Order, Seller is required to comply with all pertinent Federal, State and/or local laws, ordinance, order, notices, actions, policies and regulations that apply to the Project. Buyer is an Equal Opportunity Employer. As part of this Order, Seller is required to comply with all pertinent Federal, State and local laws ordinances, orders, notices, actions policies and regulations that apply to the Project. Buyer is a Federal Contractor and as such, all contracts entered into by Buyer must incorporate required flowdowns and Federal Acquisition Regulations that apply to the Project. To the extent not exempt, this Buyer and Seller shall abide by such requirements; including but not limited to the prohibition of discrimination against qualified individuals as prohibited by Federal law.

Also, to the extent the Upper-Tier-Contract of the Project is a public project, Buyer and Seller are entering the Purchase Order to support the fulfillment of Buyer's obligations under one or more contracts ("Upper-Tier Contract") between Buyer and a government entity or higher tier contractor ("Customer"). Seller acknowledges that, where the Customer is a government entity, government acquisition statutes and regulations will apply to this Purchase Order. Seller acknowledges that it has had the opportunity to review the terms and conditions of the Upper-Tier-Contract and ascertain all applicable laws and regulations that apply to the Project and the Work of the Upper-Tier-Contract and shall comply with all such requirements. These shall include, but are not limited to, all applicable Federal Acquisition Regulations under the Upper-Tier-Contract, the Fair Labor Standard Act of 1938 (29 U.S.C §§ 201), the Occupational Safety and Health Act of 1970, (29 U.S.C §§ 651 et seq.), the Buy American Act (41 U.S.C. §§ 8301-8305), the American with Disabilities Act of 1990 (42 U.S.C §§ 12101 et seq.), the Equal Employment Opportunities Act of 1972 (42 U.S.C §§ 2000 et seq.), the Service Contract Act of 1965 (41 U.S.C. §§ 351 et seq.), Title VII of the 1964 Civil Rights Act (42 U.S.C. § 2000e(15)), the Walsh-Healy Public Contracts Act (41 U.S.C §§ 35 et seq.), the Contract Work Hours and Safety Standard Act (40 U.S.C §§ 275 et seq.), the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (38 U.S.C §§ 101 et seq.), the Age Discrimination in Employment Act (42 U.S.C. §§ 601 et seq.), and the Davis-Bacon Act (40 U.S.C §§ 275(a) et seq.), which are all incorporated by reference hereby and as amended and including any regulations or standards issued thereunder. Seller is solely responsible for determining which Laws are applicable to its Work under the Purchase Order and must include in all lower tier Purchase Orders and subcontracts all laws and regulations applicable to them and to ensure all Sellers employees, suppliers and sub-subcontractors comply with applicable laws and regulations. As part of its Work under this Purchase Order, Seller shall provide all required certifications and representations as may be required by public agencies governing the project.