



PO TERMS AND CONDITIONS

DEFINITIONS. For purposes of this PO, Seller is defined as the party providing the goods, and Buyer is defined as the party receiving the goods. Purchase Order (PO) is subject to these Terms. **GENERAL WARRANTIES.** Where only materials (including manufactured articles) are furnished, Seller agrees and warrants as follows; To furnish the materials described within the times specified therein; To provide the materials at the price indicated; That no materials are furnished which may involve a patent infringement action or claim; and To deliver same where required free and clear of any lien rights, royalties, patent rights, or extra charges of any nature, **including sales or use taxes of any description** not shown on the face hereof. And, where materials (including manufactured articles) are furnished **subject to** the provisions of an applicable construction contract, Seller agrees and warrants as follows; That the materials furnished comply fully with all provisions of applicable plans, shop drawings, and specifications including Buy American Act requirements.

BUYER'S OFFER TO SELLER. This PO is the Buyer's offer to Seller and acceptance is limited to concurrence with the PO provisions without addition, deletion, or other modification; **provided however,** if Buyer and Seller have an existing credit agreement or contract in place, then Buyer accepts Seller's terms in the existing credit agreement or contract where in direct conflict with Buyer's PO. However, where Buyer's terms in this PO are not in direct conflict with the terms of the existing credit agreement, then Buyer's terms shall be supplementary and shall be accepted by Buyer

ACCEPTANCE. A signature by Seller's authorized employee on this PO, or other written acknowledgment of this PO shall constitute acceptance by Seller of this PO and of all its terms and conditions. Except as noted above, this PO supersedes any and all proposals, correspondence and oral agreements made prior to the date hereof, and without limitation it is expressly agreed that all provisions of quotations, brochures, sales proposals, proposal forms and other documents provided by Seller shall be void to the extent they are in any way inconsistent with this. Should the acknowledgment copy of this PO be enclosed, Seller is requested to execute (sign) same and return promptly to Buyer. No additional terms or conditions stated by Seller in acknowledging or otherwise accepting this PO shall be binding upon Buyer unless specifically accepted in writing by Buyer.

ASSIGNMENTS. No right or interest in this PO shall be assigned nor shall delegation of any obligation be made by Seller without the express written consent of Buyer. Any attempted assignment or delegation by Seller shall be void unless made in conformity with this clause.

RIGHT TO TERMINATE. If Seller fails to make progress as required by Buyer, or abandons its performance, or fails to perform the conditions of this PO, or becomes insolvent, or makes a voluntary assignment for the benefit of creditors, or commits an act of bankruptcy, Buyer shall have the right, without prejudice to any other right, on three (3) days' written notice, to terminate all or a part of this PO. If the Prime Contract is terminated by Owner or at Buyer's sole discretion, this PO, may at Buyer's option, be terminated.

DAMAGES. Seller shall be liable for all damages, costs, and expense, including but not limited to Buyer's actual attorney's fees, consequential damages, and all other losses resulting from any breach of this PO. Seller's damages, however, are expressly limited to the purchase price.

DEFECTIVE WORKMANSHIP. If any of the materials and/or services furnished hereunder are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this PO, Buyer may, at its option, reject and return such materials and/or cause discontinuation of such services at Seller's expense. Such materials shall not be replaced or services continued without express written authorization from Buyer. Buyer may accept, without prejudice, a portion of any shipment

and, at its option, have Seller repair or replace any non-conforming portion of the shipment, at Seller's expense.

Final acceptance shall not be conclusive with respect to defects, fraud, or negligence, or with respect to Buyer's rights under the "Warranty and Guarantee" clause.

Full or partial payment shall not be construed as acceptance of defective workmanship or improper materials.

DELIVERY DATE/QUANTITIES. Time is of the essence in the fulfillment of all the terms of this PO and extends to the timely provision of shop drawings. The whole of the material and work shall be fully delivered, installed (if so specified) and/or otherwise completed by the date or dates specified on this PO. However, Buyer expressly reserves the right to have Seller postpone delivery of goods covered by this for a reasonable period of time, without additional compensation being paid by Buyer to Seller. Unauthorized advance or excess shipments are returnable at Seller's expense. Buyer shall be reimbursed in full for all returned excess shipments. Seller shall be responsible for any delays associated with untimely delivery. Seller must notify Buyer in writing if delivery schedule will not be met.

FORCE MAJEURE. The term Force Majeure, as employed herein, shall mean acts of God, strikes, lockouts, acts of public enemy, changes in any applicable laws, riots, civil disturbances, explosions, blockades or embargoes, fires, floods, or other causes not reasonably within control of the party or those retained by a party claiming such inability. If, by any reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligation under this Purchase Order, then such party shall give notice and full particulars of such Force Majeure in writing to the other party as soon as possible after such occurrence of the event or cause relied upon. The obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

INDEMNITY. To the fullest extent permitted by law, Seller agrees to indemnify, protect, save, and hold Buyer and its affiliated companies, their customers, directors, officers, employees, and agents, harmless from and against any and all losses, liabilities, costs, claims, suits, actions, and judgments, or other obligations arising by reason of any acts of commission or omission done, caused, or authorized by Seller in consequence of any accident or injury to any workman or other person in the employment of the Seller or any of its subcontractors, or otherwise arising out of or pertaining to this PO, except to the extent that any such losses, liabilities, costs, claims, suits, actions, or judgments, or other obligations that are the result of Buyer's, willful misconduct or gross negligence. Rights and remedies provided Buyer in this clause shall not be exclusive, and are in addition to any other rights and remedies provided under this PO or by law.

INSTALLATION. If installation, oversight, inspection, testing, certification, or other on-site work is required in association with this Purchase Order, all work associated with installation, or other on-site work to be performed by Seller shall be governed by a separate subcontract provided by Buyer and which will specifically incorporate all terms and conditions set forth herein, as well as all restrictions as set in the governing contract documents.

INVOICES and PAYMENT. Seller shall submit separate invoices for each PO. Invoices shall indicate the PO number, shall be itemized, and transportation charges, if any, shall be listed separately. A copy of the appropriate bill of lading, and the freight waybill, when applicable, should be attached to the invoice. Seller shall submit invoices to the address shown on the face of the PO. Payment shall be made to Seller within thirty (30) days of Buyer's receipt and approval of Seller's invoice. If payment is not received by Buyer from Owner with respect to such invoice, through no fault



of Seller, then Buyer has no obligation to make payment to Seller until receipt of monies from Owner.

LAWS. Seller shall comply fully with all applicable Federal, STATE, and municipal laws, rules, and regulations in carrying out its obligations under this PO.

MATERIAL SAFETY DATA SHEETS. Any product supplied by Seller that is required by law to have a Material Safety Data Sheet (MSDS) shall have a new and legible copy of such sheet provided by Seller for each appropriate item upon delivery of goods to Buyer. An MSDS shall accompany the goods and be included with the packing slip(s).

MODIFICATIONS. Any change, modification, increase, or decrease in the work or quantities specified in this PO, or in the plans and specifications in connection therewith, or in the time period for performance, or in the place of inspection, delivery, or acceptance, or in the delivery schedule(s), shall be in writing and approved by Buyer before the same shall be binding on Buyer. However, Buyer reserves the right to make changes in, additions to, and deletions from the work herein. Other changes shall be equitably adjusted by agreement, and if the parties are unable to agree, then the price will be resolved pursuant to paragraph 26 of this PO. Seller shall not be entitled to profit or markup on work not performed. Any claim by Seller for price adjustments must be made in writing within five (5) working days from the date such changed, extra or additional work is ordered or, if the project contract documents provide for a shorter period, within sufficient time to permit Buyer to give the specified notice to Owner.

PLACE OF DELIVERY. The place of delivery shall be that set forth in the area titled "Deliver/Ship To" on the face of this PO. Any change thereto shall be affected by modification as provided for in the clause titled "Modifications."

PURCHASE PRICE. Buyer's obligation to pay is limited to the price listed on the face of this PO, subject to any changes to such price as permitted herein. Unless otherwise provided for in this PO, Seller shall not add any form of mark up to freight, and is required to produce a copy of the bill of lading, if requested, prior to payment.

RIGHT OF INSPECTION. Buyer shall have the right, but not obligation, to inspect the goods at Seller's location prior to shipment and/or at delivery, prior to acceptance.

SHIPPING DOCUMENTS. All deliveries against this PO must be accompanied by an itemized packing list prominently identified and attached to the outside of the shipping container(s). The Packing List must quote Buyer's PO number and item number(s). PO number must also be shown on the address label and on all related freight bills. Mark all items or containers of identical items with the appropriate Buyer item numbers. Buyer reserves the right to return, at Seller's expense, any materials or supplies that are unmarked or improperly counted, packaged, crated, or improperly shipped and delivered.

SPECIAL TOOLS AND TEST EQUIPMENT. If the price stated on the face of this PO includes the costs or special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, unless otherwise stated in writing, such special tooling equipment or any process sheets related thereto shall become the property of Buyer and, to the extent feasible, shall be identified by Seller as such.

TITLE AND RISK OF LOSS. Title and risk of loss of any goods subject to this PO shall pass to Buyer only when Buyer actually receives or takes possession of the goods at the place(s) specified for delivery on the face of this PO, unless otherwise mutually agreed to in writing.

TRANSPORTATION CHARGES. Unless otherwise stipulated on the face of this PO, or as modified in writing by Buyer, goods covered by this PO shall be shipped "FOB destination".

WAIVER. No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or

right, unless the waiver or renunciation is supported by consideration and is in writing, signed by the aggrieved party. Buyer's receipts of goods covered by this PO shall not constitute a waiver of any claims for damages due to delay in delivery or due to defective or nonconforming goods. Buyer shall have the right to reject goods delivered within a reasonable time after delivery and inspection, which shall not be less than ten (10) days.

WARRANTY and GUARANTEE. Seller hereby expressly warrants that it has clear title to all items furnished under this PO, and that they are being delivered free and clear of any encumbrances. Seller further warrants that all such items shall conform to the specifications, drawings, and descriptions herein provided, and to the sample(s) furnished by Seller, if any, and further, that such items shall be merchantable and fit for Buyer's or its customer's intended use, and that such items shall be free from defects in design, material, and workmanship (collectively, the "Seller's Warranty"), and as noted below: Seller's Warranty shall remain in effect for a one (1) year period after delivery and acceptance of the items by Buyer or the period of warranty otherwise provided in the Contract Documents for the items provided, whichever is longer. Neither approval by Buyer of the Seller's design, nor acceptance of the goods, shall release or discharge Seller from liability for damages resulting from a breach of Seller's Warranty.

In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern. The aforesaid warranties shall survive acceptance and payment, and shall run to Buyer, its customers, and their successors in title, and shall not be deemed to be exclusive, but shall be in addition to Buyer's other rights under the terms of this PO or at law or equity.

DISPUTES. No claim, dispute or controversy shall interfere with the progress and performance of work under this PO and Seller shall proceed as directed by Buyer with its work under this PO. As to any claims asserted by Seller related to acts or omissions of Owner or its representatives or claims by Owner for which Seller may be responsible, Seller agrees to prosecute or defend such claims in Buyer's name, in accordance with any disputes provisions contained in the project contract documents. Seller shall have full responsibility for presentation or defense of such claims and shall bear the expenses thereof, including attorneys' fees. Seller agrees to be bound by the procedure and final determinations as specified in any such disputes clause, and will not take, or will suspend, any other action or arbitration relating in any way to such claims, pending final determination under such disputes clause. Seller shall not be entitled to receive any greater amount from Buyer than Buyer actually does receive from Owner as full satisfaction and discharge of all claims for or on account of acts or omissions of Owner or its representatives. Disputes not controlled by the above, shall be decided by arbitration in Anchorage, Alaska in accordance with the American Arbitration Act unless Buyer, in its sole discretion, decides to dispense with arbitration; in that case resort shall be to the courts. Buyer may join or consolidate any third party or claim into an arbitration with Seller for final resolution. The award rendered by the arbitrators shall be final, and judgment may be entered upon and in accordance with applicable law. Seller shall participate in any arbitration pursuant to the Prime Contract which relates to or arises from this PO.

LAWS. This agreement shall be interpreted and controlled by the laws of the State of Alaska.

CONSTRUCTION. This PO shall not be construed against either party.

ENFORCEABILITY. If any provision or part of this is determined to be unlawful or unenforceable, then all other provisions or parts not held to be unlawful or unenforceable shall remain effective and in full force.