

1. **DEFINITIONS:** The following words shall have the meanings indicated:

"Contract Price" means the maximum amount payable to Seller hereunder (subject only to change by Buyer pursuant to Paragraph 2 of these Terms and Conditions) as set forth elsewhere in this Purchase Order. The Contract Price shall include any freight charges or sales, use or other similar taxes, and no such charges or taxes shall be paid by Buyer unless otherwise stated in the Purchase Order or Contract

"Drawings and Specifications" means the drawings and specifications described elsewhere in the Purchase Order or Purchase Agreement.

"Merchandise" means all goods, materials, equipment, machinery and other items, leasehold or services to be provided or performed pursuant to the Purchase Order.

"Purchase Order" or "Contract" means the Purchase Agreement and all Purchase Orders, Purchase Order Releases or Change Orders issued under this Agreement.

2. **CONTRACT:** This Purchase Order constitutes an offer by Buyer to purchase the Merchandise upon the terms and conditions stated herein and is not an acceptance of any offer by Seller to sell Merchandise. Seller shall indicate its acceptance of this offer by executing and returning the signed Purchase Agreement. This Purchase Order, together with the documents attached hereto or incorporated herein by reference, and any confidentiality or secrecy agreement executed by Buyer and Seller, shall constitute the entire agreement of the parties and may not be modified, except by a written change order issued by Buyer. No terms stated by Seller in its proposal or in accepting or acknowledging this Purchase Order shall be binding except as expressly incorporated herein by Buyer, and Seller is hereby notified of Buyer's objection to and rejection of any additional or different terms in Seller's quotation, acknowledgement, invoice, or other forms. **THIS PURCHASE ORDER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN.**

3. **PRICE PROTECTION:** Should Buyer receive and wish to accept a bona fide firm offer from any supplier of like grade, quality and quantity at a delivered price less than Seller's delivered price, Buyer shall provide Seller with written notice of such lower offer. Seller shall then give notice to Buyer stating whether it is willing to adjust the then prevailing price under this contract to meet the offer of such other supplier or allow Buyer to purchase such said quantity from the competitive source so long as Seller remains uncompetitive. If Seller elects not to meet such competitive offer, the quantities the Buyer is obligated to purchase from Seller shall be reduced by the quantity purchased under said offer.

4. **DRAWINGS AND SPECIFICATION:** Any specifications, drawings, notes, instructions, engineering information, or technical data furnished by either Buyer or Seller to the other, or referred to in the Contract shall be incorporated herein by reference. Seller shall be fully and solely responsible for obtaining product data adequate to design, manufacture, fabricate, construct and deliver the Merchandise in compliance with all requirements of the Contract. Buyer shall retain title to all such documents which it provides or causes to be given to Seller, and Seller shall not use any of such documents or the information contained therein for any purpose other than in performance of the Contract. Seller shall not disclose such documents or information to any party other than Buyer or a party duly authorized by Buyer. Upon Buyer's request, Seller shall promptly return to Buyer all such documents and copies thereof.

5. **DELIVERY:** The Seller shall deliver the Merchandise to Buyer on the date(s) indicated in the Purchase Order. If Seller fails to make delivery of any part of the Merchandise on the date(s) indicated the Buyer may terminate the Contract and pursue other remedies. All shipments shall be delivered F.O.B. to the destination designated by Buyer in the Purchase Order, and risk of loss shall remain with Seller until the Merchandise in a completed state are received by Buyer, its agent or consignee regardless of whether or not Buyer has made full payment for the Merchandise. A packing slip must accompany each such shipment, and if a shipment is to a consignee or agent of Buyer, a copy of the packing slip shall be forwarded concurrently to Buyer. If no such packing slip is sent, the count or weight by Buyer or its agent or consignee is agreed to be final and binding.

6. **WARRANTY:** Seller warrants that for a period of two years after the delivery of or performance of the Merchandise to or for Buyer, the Merchandise will (a) be of merchantable quality; (b) be fit for the Buyer's particular purposes; (c) be of high quality, and be free from defects in material and workmanship; (d) comply with the most stringent of Buyer's or Seller's specifications, performance guarantees and requirements; and (e) comply with all nationally recognized codes and established industry standards. All Merchandise shall be sold by Seller to Buyer free and clear of any liens and encumbrances. Seller's warranties and guarantees shall survive inspection, delivery and acceptance of the Merchandise and/or payment by Buyer. If the Merchandise does not conform to any of these warranties, then, at Buyer's option, Seller shall repair or replace the defective Merchandise, F.O.B. Buyer's designated site at Seller's expense, or in the case of services, re-perform the services at Seller's expense. Seller shall be responsible for all expenses and damages which Buyer incurs, including, but not limited to, incidental and consequential damages. The foregoing warranties and obligations shall also apply to the Merchandise supplied by Seller in such repair, replacement or re-performance. Seller shall pass on to Buyer the benefit of any manufacturer's warranties.

Buyer may at its option, perform remedial work, which shall be back-charged to Seller according to Buyer's standard cost accounting practices, at

cost plus twenty percent (20%) for technical supervision and administration.

7. **PATENTS AND LICENSES:** Seller shall defend (with counsel reasonably acceptable to Buyer) all suits, claims, and allegations and shall hold Buyer harmless from any liability of any nature or kind, including attorney's fees, costs and expenses, caused by or attributable to, alleged or actual infringement of any patent or other intellectual property right by the Merchandise or any process, or apparatus manufactured or supplied by Seller as part of the Merchandise or by operation of the Merchandise. Seller's indemnity shall include but not be limited to the sale or use of the Merchandise by Buyer. Seller grants to Buyer and its assignees, if any, full right and license to use any process or apparatus patents or other intellectual property incorporated into or used by the Merchandise during its operation.

8. **WAIVER:** Buyer's waiver of any breach by Seller of any of the provisions of this Purchase Order shall not constitute a waiver of any other breach of the same or any other provision. Buyer's rights and remedies under any provision of this Purchase Order shall be in addition to and not in substitution or limitation of any other rights and remedies available to Buyer under applicable law.

9. **ASSIGNMENT:** Seller shall not assign, sublet, or otherwise dispose of the whole or any part of this Purchase Order, nor shall Seller assign any money due or to become due hereunder without the prior written consent of Buyer.

10. **COMPLIANCE WITH LAWS AND REGULATIONS:** Seller warrants that neither any of the Merchandise provided to Buyer nor their manufacture, fabrication, construction, transportation or use shall violate or cause Buyer to be in violation of any federal, state or local law, code, ordinance, regulation, standard, rule, requirement or order. In the event of any conflict between the provisions of any laws, codes, ordinances, regulations, standards, rules, requirements or orders described in this Section 10, the more or most stringent provisions shall apply. Seller shall promptly take, at its expense, all action necessary to make all Merchandise comply with the applicable Federal, State or local laws, codes, ordinances, regulations, rules, standards, requirements or orders after Seller receives either from the applicable agency or from Buyer a notice that some violation exists with respect to the Merchandise. If Seller fails to promptly take such action, Buyer may take all such action at Seller's expense. Seller shall also be liable for the payment of any penalties and/or fines imposed as a result of the failure of any Item provided by or for Seller hereunder to comply with all of the above requirements.

11. **INDEMNIFICATION:** Seller shall indemnify and hold Buyer and its affiliates, officers, directors, employees, agents, licensees, sub-licensees and all their successors and assigns (Collectively, the "Indemnitees") harmless from and against any and all losses, claims, demands, suits, damages, liabilities and related costs and expenses (including reasonable attorneys' fees and litigation expenses) incurred by or asserted against any Indemnitee arising out of or in any way connected with: (a) the performance of this Agreement; (b) breach of any provisions or warranties of this Agreement; (c) accidents, occurrences, injuries or losses to or of any person or property that are in any way related to or result from, in whole or in part, the use and/or modification of the Goods by Buyer or Buyer's agents or employees, regardless of whether caused in part by an Indemnitee; and/or (d) any and all claims for infringement of any patent, copyright, trademark or trade secret by reason of manufacture, use or sale of Goods. Seller's indemnification obligation or benefits payable by the Seller or any subcontractor or supplier under worker or workmen's compensations acts, disability benefits acts, or other employee benefit acts.

12. **INSURANCE:** Seller, at its expense, shall carry and maintain in force at all times relevant hereto the following insurance, on policy forms and with insurance companies acceptable to Buyer, at the indicated minimum coverage limits, or such higher limits as Buyer may require, or the limits provided under insurance currently held by Seller as of the effective date of the Contract, whichever is greater.

a. **Workers' Compensation - Statutory; Employer's Liability -** Coverage in accordance with the laws of the Commonwealth of Pennsylvania. This policy shall include a waiver of subrogation to Buyer

b. **Comprehensive General Liability-** Bodily injury and property damage with limits of \$2,000,000 combined single limit each occurrence, and umbrella excess liability of an amount equal to 50% of the contract price. This policy shall name Buyer as additional insured.

c. **Comprehensive Automobile Liability-** Covering owned, hired and non-owned vehicles with limits of \$1,000,000 combined single limit each occurrence, with an umbrella excess liability of an amount equal to 50% of the contract price.

d. **Employers' Liability-** Amount not less than \$1,000,000, with umbrella excess liability of an amount equal to 50% of the Contract Price.

e. **Product Liability-** Coverage with an annual aggregate limit of an amount equal to no less than 50% of the Contract Price

f. **All Builders Risk Insurance-** All Builders Risk is Part of Buyer's Property Insurance Policy. Seller is responsible for the deductible amount of \$100,000 per incident, occurrence or casualty to the extent such loss is caused by Seller and/or any Subcontractor and/or anyone for whom the Seller is responsible. Seller shall be named as an additional insured on Buyer's Builder Risk Insurance.

Seller shall maintain in force the insurance required by this Article and shall seasonably renew all required coverage during the term of the Contract.

13. **Force Majeure:** Neither party hereto shall be liable to the other for failure or delay in performance hereof when such failure or delay is caused by conditions beyond such party's control including, but not limited to, acts of (God, floods, fires, storms' strikes, wars and other acts of force majeure, as well as government restrictions, prohibitions, regulations and requisitions or other interferences not presently in effect, provided that the party claiming the benefit of the clause shall use all diligence to fulfill the obligations assumed under this agreement.

14. **LIENS:** Seller hereby waives, to the fullest extent permitted by law, for itself and all other parties claiming by, through or under Seller, all lien rights, including but not limited to mechanic's lien rights, against Buyer and the property of Buyer and Seller agrees promptly to satisfy and discharge (within 7 days after receiving notice thereof) any claim of lien against Buyer or the property of Buyer which may arise out of, or relate to this Purchase Order or the Merchandise.

15. **SUSPENSION OR TERMINATION:** Buyer reserves the right, at any time and for its convenience, to terminate this Purchase Order in whole or in part by written notice to Seller. Immediately upon receipt of such notice, Seller shall stop all performance hereunder except as otherwise directed by Buyer. If Seller is not in default of any of its obligations hereunder at the time of such termination, Buyer shall pay to Seller, as Seller's sole and exclusive remedy, an amount equal to: (a) reasonable and documented costs incurred by Seller prior to termination in connection with the Merchandise, plus (b) the reasonable cost, if any, incurred by Seller in winding up its work, not to exceed five percent (5%) of the entire Contract Price; provided, however, that the above amounts plus prior payments shall in no event exceed the Contract Price in effect on the last day of the contract period provided Buyer takes delivery within one year of this date. If Seller is in default of any of its obligations hereunder at the time of termination, Seller shall not be entitled to any further payments from Buyer.

16. **DEFAULT:** If the Seller: (a) becomes insolvent; (b) has a petition under any chapter of the bankruptcy laws filed by or against it; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver requested for or appointed to it; (e) fails to use properly skilled personnel in its performance under the Contract; (f) should fail to make prompt payment to any subcontractors it may have or for any material, labor, transportation, supplies, fuel, use of equipment or any other expense it incurs under the Contract; or (g) fails to comply with any of its obligations under the Contract then Buyer may, in addition to its rights under Section 4 above, at its option either cure the default at Seller's expense or terminate the Contract after first giving Seller three (3) days written notice to cure such default, if Seller has failed to cure such default within such three (3) day period. Immediately after such termination, Buyer may: (i) take possession of the Merchandise wherever it may be located and in whatever state of completion it may be together with all drawings and other information necessary to enable Buyer to have the Merchandise completed, installed, operated, maintained and/or repaired; (ii) pay to Seller any amount then due under the Contract after taking full credit for any offsets to which Buyer may be entitled; (iii) contract with or employ any other party or parties to finish the Merchandise; and (iv) collect from the Seller any additional expense, losses or damage which Buyer may suffer.

17. **WORK ON PREMISES:** Before Seller provides any services or work on Buyer's premises, Seller will examine the premises and any specifications or other documents furnished in connection with the Merchandise and satisfy itself as to the condition of the premises and site. No allowance shall be made in respect of any error as to any of the foregoing on the part of Seller. Seller shall at all times keep the premises free from accumulations of waste material or rubbish. At the completion of installation of the Merchandise, Seller shall leave the premises and the Merchandise broom-clean. Seller assumes all risks and shall indemnify and hold Buyer and its employees harmless from and against all damages, claims, suits or liabilities arising out of, or in any way connected with damages to vehicles or other personal property of Seller, its employees and subcontractors caused by accidents or occurrences on Buyer's premises, even if Buyer has been negligent.

18. **ENTIRE AGREEMENT:** The Contract sets forth the entire agreement between Seller and Buyer on the subjects covered herein, and, except as otherwise provided above in Section 2, no terms, conditions, understanding or agreement purporting to modify or vary the terms of the Contract shall be binding unless made in writing and signed by Seller and Buyer. In the event of any conflict between any provision of these terms and conditions and any other provisions of the Contract, these Terms and Conditions shall prevail or control unless the conflicting provision in such other document expressly states that it supersedes these Terms and Conditions or unless the conflicting provision is typed or handwritten on the face of the Purchase Order by Buyer before acceptance by Seller. Any terms and conditions printed on any other purchase order, release order, acknowledgment, invoice or other form issued by either Seller or Buyer which conflicts in any way with the terms and conditions of this Contract are superseded by this Contract.

19. **LOST PROFIT:** In no event shall Buyer be responsible or liable for Seller's loss of actual or anticipated profits arising out of or resulting from this Purchase Order or from the performance, suspension, termination, or breach hereof, or for any other delay or consequential damages Seller may incur.

20. **RISK OF LOSS:** Seller shall be responsible for delivering the Merchandise to the point of destination indicated by the delivery terms of this Purchase Order. Should loss or damage to goods occur prior to such delivery, Seller shall be responsible therefor.

21. **SURVIVAL:** All indemnification, payment and other covenants and obligations of Seller and Buyer under this Purchase Order that could possibly imply the necessity for performance after the expiration or sooner termination of this Purchase Order shall so survive such expiration or termination, including but not limited to those contained in Paragraphs 5, 6 10, 11, 15 and 16 of these Terms and Conditions.

22. **GOVERNING LAW:** The terms and conditions of this Purchase Order shall be construed and interpreted under, and all respective rights and duties of the parties shall be governed by, the substantive laws of the Commonwealth of Pennsylvania.

23. **TITLE:** Seller represents and warrants that it shall convey to Buyer good title to the Merchandise, free from any liens security interests or other title defects or encumbrances, upon payment therefor or delivery thereof, whichever occurs first.

24. HEADINGS AND SEVERABILITY: Any headings preceding the text of the Paragraphs hereof are inserted solely for convenience of reference, shall not constitute a part of this Purchase Order, and shall not otherwise affect the meaning, content, effect, or construction of this Purchase Order. If any provision contained herein is held to be invalid or unlawful, such provision shall be severable from the remaining provisions of this Purchase Order, which shall remain in full force and effect.