

TERMS AND CONDITIONS OF PROCUREMENT

1. **Integration and Acceptance.** Except as otherwise provided herein, this Purchase Order embodies the entire agreement and understanding between the parties with respect to the goods and services covered by this Purchase Order and supersedes all prior agreements and understandings relating to the subject matter thereof, whether oral or written. Acceptance of this Purchase Order is limited to acceptance of the express terms contained on its face and these General Terms and Conditions of Procurement (the "General Terms") which are incorporated into the Purchase Order by this reference and form an essential part of the agreement between the parties. Any terms contained on the face of this Purchase Order shall have precedence over any conflicting terms contained in these General Terms. Any additional or different terms proposed by Seller, including any terms and conditions contained in or on any shipping or delivery ticket or any other attempt by Seller to vary or modify any of the terms contained in this Purchase Order, are hereby rejected, and this Purchase Order shall be deemed accepted by Seller without said additional or different terms. If a prior offer has been made by Seller with respect to the goods or services covered by this Purchase Order, Buyer's acceptance of Seller's offer is expressly conditioned on assent to the General Terms contained in this Purchase Order. If this Purchase Order incorporates any other set of general terms on the cover page of this Purchase Order, then such general terms shall be void and these General Terms shall remain in full force and effect. In the event that the parties hereto have previously agreed to a master set of general terms, those general terms are still in effect, and the general terms have not been referenced on the face of this Purchase Order, then such master set of general terms shall be applicable to this Purchase Order as if such general terms were incorporated by reference on the cover page of this Purchase Order and those master set of general terms shall take precedence over any conflicting terms contained in these General Terms. Commencement of work on the goods or services subject to this Purchase Order, or shipment of the goods, whichever occurs first shall be an effective mode of acceptance by Seller of the General Terms in this Purchase Order.

2. **Price and Shipping.** A separate invoice shall be rendered for each order for good and/or service or for each shipment made on an order. An invoice and bill of lading for goods delivered shall be dated and mailed on the day of actual shipment. An invoice for services performed shall be sent following completion of the services. All invoices shall be mailed to the Buyer at the address shown on the face of the Purchase Order. Seller acknowledges that Buyer, not any entity affiliated with Buyer, is solely liable for Buyer's acts, omissions, or breaches hereunder. An itemized delivery ticket, bearing Buyer's Purchase Order number, must be left with the goods to ensure receipt. If delivery is made by carrier, an itemized delivery ticket must be attached to the outside of the package. The price includes the cost of all goods and services, including costs of packing, shipping, and delivery of the goods to the "F.O.B point" or other delivery point specified.

Title to, and risk of loss of goods shall pass from Seller to Buyer upon the completion of the delivery of the goods to such F.O.B. point designated in the Purchase Order. Any premium transportation costs incurred or resulting from Seller's failure to meet the delivery schedule shall be paid by Seller. Any cash discount or net payment period will date from the receipt of the invoice or the receipt of acceptable goods, whichever is later, and not from the date of the invoice. In the case of corrected invoices, it will date from the earlier of the date of the corrected invoice or receipt of the acceptable goods. Payment of Seller's invoices shall be subject to subsequent adjustment for shortages. Seller agrees that the prices stated on the face of the Purchase Order are firm unless otherwise noted in writing. Invoices submitted more than 6 months after delivery of conforming goods and/or services will not be honored.

3. **Services.** All services to be provided and/or performed by Seller shall be in accordance with all performance timelines and parameters set forth in the applicable Purchase Order and shall be subject to acceptance by Buyer. Invoicing for services will be in accordance with the Purchase Order.

4. **Independent Contractor.** In supplying any labor or performing any services hereunder, Seller is an independent contractor with sole responsibility for all persons employed in connection therewith, including without limitation exclusive liability for payment of all Federal, State, and local employment and disability insurance, social security and other tax and contributions. Seller shall comply with all of Buyer's rules policies and procedures including security procedures.

5. **Quantities.** This is not a requirements contract. Buyer reserves the right to use its own resources and to purchase the same or similar goods and services from third parties.

6. **Timely Performance.** Time is of the essence of this Purchase Order.

7. **Specifications.** Specifications, if any, for the goods and services are provided for in this Purchase Order. By accepting a Purchase Order, Seller agrees to accept full responsibility and liability for and releases Buyer from any liability (i) for all goods manufactured and services performed in accordance with specifications that have been accepted by Seller, and (ii) arising from specifications which Seller created or worked with Buyer to create as a joint project. No substitution will be permitted under this Purchase Order except on specific written authority of Buyer.

8. **Confidentiality.** During the term of this Purchase Order and thereafter, each of Seller and Buyer shall and shall cause their respective employees and subcontractors to treat and cause to be treated as confidential all information received or obtained from Buyer or Seller, respectively, in connection to the performance of this Purchase Order.

9. **Taxes.** Unless otherwise indicated on the face of this Purchase Order, Seller agrees that all applicable Federal, State and local taxes are included in the price. Such taxes are the sole obligation of the Seller.

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10. **Inspection.** Buyer shall have the right prior to acceptance to inspect and approve any goods and service and to reject any or all of the said goods and services which are in Buyer's judgment defective or nonconforming. The inspection by Buyer shall not relieve Seller of any responsibility for latent defects in the goods or services. Such inspection shall not affect Seller's warranties hereunder and such warranties shall survive any such inspection. Payment for goods and services under this Purchase Order shall not constitute acceptance by Buyer.
11. **Warranties.** In addition to Seller's customary warranties and any other warranties contained herein or implied by law, Seller expressly warrants that all of the goods and/or services will: (i) be performed in accordance with the best practices in the industry prevailing at the time of the Purchase Order is issued; (ii) conform to all specifications, and features and functionalities in any demonstration goods; (iii) be new, unless otherwise specified; (iv) be free from defects in design, material, workmanship and title; (v) be adequately contained, packaged, marked and labeled; (vi) be merchantable; (viii) not infringe any patent, trademark, or copyright now existing or hereafter issued; and (viii) be safe and appropriate for the purpose for which the goods or services are intended and for which goods or services of that kind are normally used. Seller agrees to promptly replace, correct defects in any goods and to re-perform any services not conforming to the foregoing warranties, without expense to Buyer, when notified of such nonconformity by Buyer. In the event of Seller's failure to promptly correct defects in or replace nonconforming goods or to re-perform nonconforming services, Buyer may terminate any and all applicable Purchase Orders, in whole or in part, and Seller shall within 15 days of the effective date of termination, refund to Buyer all fees paid by Buyer under the applicable Purchase Order(s). The foregoing warranties shall inure to the benefit of Buyer, its assigns, successor, customers and other users of Seller's goods and services.
12. **Proprietary Rights; Compliance with Laws.** Seller warrants that: (a) all patents, trademarks, trade names, trade dress, copyrights, trade secrets, rights of publicity, and other proprietary rights used by Seller in connection with the goods and services or the development or manufacture of the goods and services are owned by Seller; (b) Seller has been properly authorized by the owner of such proprietary rights to use such rights in connection with such goods or services and to sell goods or services that incorporate such proprietary rights to Buyer; and (c) Seller warrants that goods and/or services provided pursuant to this Purchase Order do not infringe on any third party copyright or patent. Seller further warrants that all goods have been or shall be produced, packaged, tagged, labeled, packed, shipped, and invoiced and all services will be delivered in compliance with all Federal, State and local laws, regulations and ordinances. If required by law, Seller shall provide Material Safety Data Sheets with each shipment with a copy to Buyer at the address shown on the face of the Purchase Order.
13. **Changes.** Buyer reserves the right at any time to make changes in the goods or services, including but not limited to the: (a) specifications, drawings, and data where the items to be furnished are to be specially manufactured for the Buyer; (b) quantities (unless the applicable goods have already been shipped to Buyer); (c) time and place of delivery; and (d) method of packing and shipment. If any such changes cause an increase or decrease in the cost of the goods or services, or the time required for the performance, an equitable adjustment may be requested by Seller and the parties shall discuss an adjustment to the respective Purchase Order.
14. **Indemnification.** To the fullest extent permitted by law, Seller assumes the risk of all liability, claims, damages, losses and expenses, including, but not limited to, attorney's fees ("Losses"), and agrees to defend, indemnify and hold harmless Buyer and Buyer's affiliates (including each of their respective employees, officers, directors and representatives) (collectively, the "Buyer Parties") from and against any and all Losses which may accrue to or be sustained by the Buyer Parties on account of any claim, suit or action made or brought against the Buyer Parties (including claims, suits or actions brought against the Buyer Parties because of the Buyer Parties own negligence) for the death of or injury to employees, agents or subcontractors of the Seller or destruction of property of the Seller, sustained in connection with Seller's performance of any activity performed at the Buyer Parties' facility, arising from any cause whatsoever (including, without limitation, failure of or defect in any equipment, instrument or device supplied by the Buyer Parties or their employees to the Seller, its employees, agents or representatives at the request of the Seller, its employees, agents or representatives), except for the willful misconduct of the Buyer Parties or their employees acting within the scope of their employment. Further Seller shall indemnify, defend, and hold harmless the Buyer Parties from and against all Losses arising out of or resulting from Seller's non-compliance with these General Terms or in connection with Seller's performance or failure to perform under this Purchase order.
15. **Limitation of Liability.** Except in connection with Seller's (a) indemnification obligations under Section 14, (b) gross negligence or willful misconduct, or (c) anticipatory breach or refusal to perform the services or provide the goods, under no circumstances will Buyer or Seller or their respective subsidiaries or affiliates be liable for consequential, indirect, special, punitive, or incidental damages or lost profits, whether foreseeable or unforeseeable, based on claims of supplier or any other party arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in tort, failure of any remedy to achieve its essential purpose, or otherwise. Notwithstanding the form (contract, tort or otherwise) in which any legal or equitable action may be brought, in no event will Buyer or its subsidiaries or affiliates be liable for damages or losses that exceed the amount of fees paid by Buyer for the goods or services that gave rise to such damages or losses

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for each respective breach or series of related breaches. Each of Buyer's rights and remedies hereunder shall be cumulative and additional to any other or further rights or remedies provided in law or equity.

16. **Insurance.** Seller shall carry, at its sole cost and expense, commercial general liability (CGL) insurance, including product liability and completed operations coverage with limits of not less than \$2,000,000 combined single limits per occurrence and in the aggregate. Contractor's CGL policy shall stipulate that such insurance is primary, and not contributing or additional, to any other insurance carried by Buyer, and Seller's policies shall name Buyer as an additional insured. If required by Buyer and before any work begins, Seller shall deliver to Buyer a certificate of insurance showing Buyer as an additional insured under the foregoing coverage. Seller shall carry, at its sole cost, work's compensation and employer's liability coverages providing statutory benefits and limits which shall fully comply with all State and Federal requirements applying to this insurance in the states where the goods are manufactured and delivered with a waiver of subrogation in favor of Buyer. Whenever Seller shall have Buyer's property in its possession for Seller's fabrication or otherwise as herein required, Seller shall be deemed the insurer thereof and shall be responsible for such property until its return to and acceptance by Buyer.
17. **Buyer's Remedies.** In addition to all other remedies available to Buyer under the Uniform Commercial Code or otherwise, any and all good and/or services may be rejected by Buyer and abandoned, returned or held at Seller's expense and risk, when such goods and/or services: (a) are not produced, sold, shipped and/or delivered in compliance with the terms of this Purchase Order; (b) are delivered in excess of the quantities ordered, in broken packs or partial shipments, or in packages or assortments other than as specified; (c) violate or allegedly violate any laws, regulation, or any governmental administrative orders, rules or regulation; or (d) infringe or allegedly infringe any patent, trademark, trade name, trade dress, copyright, trade secret, right of publicity, or other proprietary right, or involve or allegedly involve any unfair competition. At its election, Buyer may accept non-conforming good or services, and Seller shall be liable for any reduced value of such goods and services and the costs of repair or to re-perform the same.
18. **Termination.** Buyer reserves the right to terminate this Purchase Order for: (i) cause, following five days notice, if Seller fails to comply with any of the terms in this Purchase Order; or (ii) Buyer's sole convenience upon written notice to Seller regardless of compliance with the terms of this Purchase Order. In the event of termination for convenience, Seller shall: (i) immediately stop all work under this Purchase Order and immediately cause its subcontractors to cease such work; (ii) be paid its reasonable direct costs; and (iii) not be paid for any work done after receipt of the notice of termination or for any costs incurred by its subcontractors which Seller could reasonably have avoided. Any claim by Seller for payment of the termination charge provided for hereunder is waived unless asserted in writing to Buyer within 15 days after receipt of the notice of termination. In the event of termination for material breach, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all damages resulting from Seller's material breach.
19. **Force Majeure.** Neither party shall be liable for any failure to perform including failure to deliver or take delivery of the services and/or goods arising from causes beyond reasonable control including without limitation, acts of God, fire, flood, acts of war, government action and accident.
20. **Subcontractors.** It is Buyer's policy that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals have the maximum practicable opportunity to participate in the performance of contracts let by Buyer. The Seller hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this Purchase Order.
21. **Governing Law.** This Purchase Order shall be governed by and construed in accordance with the laws of the State of Illinois and Seller and Buyer hereby agree that any claim or cause of action whether in law or equity, arising under or relating to this Agreement and whether brought by Seller or Buyer shall be brought in the Superior Court of Will County, Illinois; provided, however, that any such claim or cause of action may be brought in, or removed to, the United States District Court for the Northern District of Illinois, to the extent that such court would have jurisdiction over the subject matter of such action. By acceptance of this Purchase Order, Seller agrees to comply with all applicable Federal, State and local laws.
22. **Waiver of Lien.** For Projects involving the construction of improvements to Buyer's property, and provided Buyer has paid Seller all amounts properly due and owing for goods and /or service provided by Seller or its subcontractors, Seller agrees to keep Buyer's property free and clear of, and shall promptly release, or cause the release of, all liens, lien claims, recorded notices, claims for non-payment or lis pendens filed of record by any subcontractor (regardless of tier).
23. **Assignment.** Seller shall not assign or transfer any rights, claims, or duties under, or related to, this Purchase Order without the prior written consent of Buyer which consent may be withheld in Buyer's sole discretion. Buyer may assign or transfer its interest in this Purchase Order without limitation. This purchase Order shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns.