



PO TERMS AND CONDITIONS AGREEMENT

"Buyer" as defined on the Purchase Order ("PO") has issued to "Seller" (Buyer and Seller, collectively, "the Parties"), the PO which defines the Goods and/or Services as defined herein to be sold to the Buyer for the agreed upon price. "Goods" and "Services" shall mean the items specified on the written P O. The PO is issued by Buyer subject to the terms and conditions stated herein ("Agreement"). This Agreement governs the terms and conditions of Buyer's procurement from Seller of any goods or services regardless of whether this Agreement is referenced on any PO, transactional document or any other communication.

1. The PO constitutes a valid and binding contract in accordance with the terms and conditions set forth herein upon the occurrence of any of the following: (1) Seller's submission of shop drawings to Buyer; (2) Seller's first shipment of material or equipment ordered hereunder; or (3) Seller's acknowledgement of the PO irrespective of whether such acknowledgement contains, purports or attempts to incorporate Seller's terms and conditions of sale; for clarity, the occurrence of any of the foregoing expressly limits acceptance to the Terms and Conditions of this PO. Seller further agrees to project specific flow down terms and conditions as specified on the project specific addendum and any other written amendments or change orders to this Agreement, provided the foregoing are signed by authorized representatives of both Parties. No additional or different terms or provisions, except additional warranties given by Seller, or any acknowledgement, packing slip, invoice or other form or document supplied by Seller shall become a part of the terms of the sale between the Parties. Buyer is not required to object in writing to any such term or provision. It is expressly agreed that there are no promises, agreements or understandings between Buyer and Seller not contained herein and that there have been no representations made by Buyer not contained in the PO. Any subsequent modifications must be mutually agreed upon in writing between Seller and Buyer.

2. Seller is to include with each shipment all necessary documents to insure prompt delivery of all Goods to Buyer. Material or equipment on the PO is purchased F.O.B. job site, unless otherwise noted on the PO. Buyer must approve any expedited changes prior to shipment. Buyer shall have the right to route all shipments of Goods. Risk of loss shall be upon Seller until conforming Goods are delivered to and have been fully inspected and accepted by Buyer based upon full visual inspection. Goods that cannot be visually inspected due to crating, shrink wrap or packaging shall remain at the risk of Seller and concealed damage or shortage of items identified upon discovery or preparation for installation will be reported upon discovery. Within forty-eight hours of written notice from Buyer, Seller agrees to provide a recovery plan and schedule for replacement or correction of damaged Goods without expense to Buyer. In the event the recovery plan and schedule fails to meet the project schedule or Seller fails to promptly correct damaged Goods, Buyer, after reasonable notice to Seller, may make such corrections or replace such Goods and charge Seller for the cost incurred by Buyer in doing so. Damaged Goods will be promptly returned at Seller's expense and credit issued within two business days of receipt of Goods.

3. Seller shall deliver the Goods in accordance with the PO or plans and specifications, subject to approval of the client, owner, architect, engineer or any other party designated in the specifications, including but not limited to, all of the requirements of contract documents entered into by and between Buyer and its client relating in any way to the Goods hereunder and at the prices specified on the PO and if applicable, any subsequent change orders. If Seller is required to prepare shop drawings, shop drawings shall be submitted by Seller in a timely manner or as otherwise required by Buyer.

4. Seller warrants that the Goods and Services specified herein were produced or performed in compliance with all applicable federal, state, and local regulations, laws, statutes, executive orders and ordinances, and subdivisions or agencies thereof. The Seller shall take all safety measures required by Buyer or its client and shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property. All electrical material, articles and components supplied by Seller must be UNDERWRITERS LABORATORIES APPROVED ("UL Approved") and comply with the National Electrical Code. In the event such UL Approved Goods are unavailable, Seller shall notify Buyer in writing immediately upon receipt of the PO.

5. Time is of the essence with respect to Seller's performance of the PO. The Parties agree that any damages and expenses arising from the Seller's partial or non-fulfillment of this order within the specified time limits shall be due from Seller to Buyer or deducted from payments on the PO if owing. No extension of time shall be valid without Buyer's written consent. If necessary, certain portions of the stated Goods shall be delivered in preference to others to secure the completion of the work and within the time specified. Buyer reserves the right to cancel the PO, or any part thereof, by notice effective when received by Seller (a) if Goods are not shipped or Services are not performed at the time or times required; (b) if Goods or Services are not in accordance with approved submittals, or as otherwise required in the PO or the plans and contract documents as specified in the PO, or are defective in workmanship or quality; or (c) if Goods are not approved by the client, owner, architect, engineer or any other party designated in the specification; (d) if the contract of Buyer with the client is terminated; or (e) for causes due to any governmental acts, demands, requirements or regulations, or fire, labor trouble, accident or any other cause whatsoever beyond Buyer's reasonable control. Either Party may cancel the PO in the event that the other Party becomes bankrupt or insolvent or makes an assignment for the benefit of creditors. Upon any such cancellation as specified herein, the Goods, or parts thereof, which have previously been delivered to Buyer, may be returned by Buyer to Seller, and if the reason for such cancellation is any of the causes specified in (a), (b) or (c) within this paragraph above, Seller shall pay all transportation charges for the delivery to Buyer and the return to Seller. Seller shall be paid a mutually agreeable equitable adjustment for Services already performed. Seller shall provide to Buyer a conditional lien release within five (5) days of cancellation.

7. INDEMNITY: To the fullest extent permitted by law, Seller hereby assumes exclusive responsibility for any and all damages, personal or bodily injury, including death, or property damage, to the extent resulting from or arising out of Seller's supply of Goods and Services, including but not limited to defective Goods or delayed manufacturing or delivery of the Goods furnished in accordance with PO. Seller agrees to indemnify, protect and defend Buyer, its officers, directors, agents, or employees, and its subsidiaries or



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affiliated companies, and its clients against all claims, suits, losses or damages (“Claims”) to the extent resulting from or arising out of the acts or omissions, violation of any applicable law or regulation, breach of confidentiality obligations, or fraud by Seller, its employees, agents, subcontractors, suppliers, invitees or others acting for the benefit of the Goods and/or Services to be performed hereunder. In accepting the PO, Seller agrees to defend, at its own cost and expense, all Claims, demands, and actions which may be made or instituted against Buyer for alleged patent infringement by the use or resale of Goods covered by the PO, and to indemnify and hold harmless Buyer against all costs, expenses (including attorney’s fees), and judgments in and incident to such Claims, demands and actions.

8. The PO, including the obligation of Seller to perform and Seller’s rights to receive monies for performance, may not be assigned, pledged, transferred or otherwise encumbered by Seller, without the prior written consent of Buyer.

9. Buyer reserves the right to make changes and alterations in any Goods required to be supplied and/or Services required to be performed by Seller and in the drawings and specifications, if any, or the contract documents. If any such change or alteration causes a variation in the cost of furnishing the Goods or performing the Services covered hereunder, the price of such Goods or Services must be agreed upon in writing by Seller and Buyer before Seller performs such Services or supplies such Goods. No claim for such changes shall be allowed unless Buyer has agreed in advance upon such changes in writing. Shipments are subject to postponement at Buyer’s request.

10. Warranty of Goods supplied by the PO shall begin only after said Goods or equipment is installed and energized, or as specified in the PO. Seller shall require that all manufacturers or producers of Goods will warrant that all such Goods will conform to any statements made on the containers or labels or advertisements for such Goods, and will be adequately contained, packaged, marked and labeled by Seller. Seller warrants that all Goods furnished will be safe and appropriate for the purpose for which Goods of that kind are normally used, will be fit for Buyer’s intended or particular application and will conform in all respects to samples approved by Buyer. Inspection, testing, acceptance or use of the Goods furnished hereunder shall not affect the Seller’s obligation under this warranty, and such warranties shall survive inspection, testing, acceptance and use. Seller’s warranty and manufacturer’s warranty (which is hereby being assigned by Seller to Buyer) shall run to Buyer, its successors, assigns and clients, and users of products sold by Buyer. Within forty-eight hours of written notice from Buyer, Seller agrees to provide a recovery plan and schedule for replacement or correction of defects of any Goods not conforming to the foregoing warranty without expense to Buyer. In the event the recovery plan and schedule fails to meet the project schedule or Seller fails to promptly correct defects in or replace nonconforming Goods, Buyer, after reasonable notice to Seller, may make such corrections or replace such Goods and charge Seller for the cost incurred by Buyer in doing so. Defective Goods will be promptly returned at Seller’s expense and credit issued within two business days of receipt of Goods. Seller expressly warrants that all Goods supplied shall be free and clear of all liens and encumbrances, good and merchantable title thereto belonging to Seller and documentation of the foregoing shall be provided to Buyer upon Buyer’s request, and that all Goods or Services furnished under the PO shall conform to all specifications and the highest applicable industry standards, will be new, will be under manufacturer’s warranty, will be free from defects, whether latent or patent, in material or workmanship and in strict conformance with the contract documents.

11. Goods shipped must not be in excess of quantity ordered. Buyer shall have the right to return all unused material that is fit for resale and Seller shall credit Buyer for returned goods. Seller shall notify Buyer in writing prior to Buyer issuing a PO of any Goods that cannot be returned for full credit or are subject to a partial credit or are otherwise subject to restocking fees.

12. In the event of the failure of the Seller to pay for Goods and Services used in the performance of the PO, Buyer may, at its option, without notice to the Seller, pay for such claims and charge the amount to the Seller or deduct from the amounts due Seller. In case any action or filing to establish is brought by any person, firm, corporation employed by the Seller, the Seller shall, at its own expense (including attorney’s fees), initiate or defend an action to effect cancellation of such lien promptly and without delay and per any such lien established in court.

13. Subject to Buyer’s receipt of payment for the Goods or Services, Buyer shall pay Seller in monthly payments on the tenth (10th) of the second (2nd) month following the date of the invoice. To ensure prompt payment, invoices must correspond with line item detail, prices and quantities on the PO. If Seller extends a three percent (3%) discount on Goods, Buyer shall pay approved invoices within thirty (30) days. Any additional mutually agreed upon financial terms between Buyer and Seller supersede these payment terms.

14. Seller warrants that the prices for the Goods sold to Buyer hereunder are not less favorable than those currently extended to any other similarly situated customer for the same of similar Goods purchased in similar quantities, under similar terms, over the same period of time. In the event Seller reduces its price for such Goods during the term of the PO, Seller agrees to reduce the prices hereof correspondingly. Seller warrants prices shown on the PO shall be complete and no additional charges of any type shall be added without Buyer’s express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, storage, insurance, boxing and crating. No price increase shall occur regardless of when the Goods are shipped without Buyer’s express written consent.

15. Buyer’s failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer’s waiver of any breach hereunder shall not thereafter waive any other terms, conditions or privileges. Monies due or which may become due under the PO shall be subject to set off, recoupment or other lawful means of enforcing any present or future claim or claims which Buyer may have against Seller.

16. INSURANCE REQUIREMENTS: Seller shall provide the necessary insurance for its risk of loss until the later of title passing to Seller or receipt of the Goods and Services by Buyer and will require same of any subcontractor, supplier or agent they may engage for the supply of the Goods. The Seller shall purchase and maintain insurance of the following types of coverages and limits of liability:



1) Commercial General Liability (CGL) \$2,000,000 each occurrence, \$4,000,000 products liability/completed operations, \$4,000,000 annual aggregate, to include a) Buyer and its clients and all other parties required of the Buyer by written contract as additional insureds; b) the insurance shall be primary and not be contributory with any insurance provided by the Buyer and its clients; c) a waiver of subrogation and d) products liability coverage applicable to the additional insureds; 2) Automobile Liability with combined single limits of \$2,000,000, applicable to all owned, leased, hired and non-owned automobiles; 3) follow form Umbrella/Excess liability \$5,000,000 per occurrence/aggregate; 4) Workers' Compensation with statutory limits and Employers' Liability with \$1,000,000 limits; 5) All risk property insurance for full replacement cost for all materials, tools and equipment owned, leased, borrowed or rented or under the care, custody or control by Seller. Seller hereby waives all rights of subrogation for all liability and worker's compensation coverage, where permitted by law, and damage that may occur to materials, tools and equipment owned, leased or rented by Seller. Seller shall forward to Buyer a certificate of insurance showing the above required insurance coverages, limits and conditions with a company acceptable to the Buyer. Such coverages shall not be cancelled without at least thirty days prior written notice given to the Buyer. Seller agrees to purchase Professional Liability insurance with limits of \$2,000,000 or require it of their subcontractors, agents or supplier if Goods or Services include design, testing, startup and/or commissioning services. Where a Controlled Insurance Program ("CIP") is required for on-site activities and Seller is required by client to enroll, these Insurance Requirements shall apply to coverages which Seller is required to carry outside the scope of the CIP.

17. The PO shall be construed by and governed in accordance with the laws of the state of Buyer's location as listed on the PO, unless otherwise required by law. If any party hereto commences any litigation, arbitration, or other action against any other party hereto with respect to the enforcement or interpretation of this Agreement, then the prevailing party in such litigation, arbitration or other action shall be entitled to an award of its costs of litigation, including reasonable attorneys' fees. The prevailing party shall be determined by the judge or arbitrator.

18. Seller shall provide competent and adequately trained personnel. Buyer reserves its right to remove personnel deemed by Buyer, in its sole judgment, to be unsatisfactory due to incompetence, lack of cooperation, unwillingness to comply with established policies and procedures, improper conduct or other behavior deemed detrimental to the workplace.

19. During performance of the PO, the Seller shall not discriminate against any employee or applicant for employment because of race, color, sex, (including pregnancy, childbirth or related medical condition), age, disability, protected veteran status, sexual orientation, gender identity, genetic information, ancestry, national origin or any other characteristic protected by law. Unless exempted, on all federally assisted contracts, Seller shall comply with all provisions of Executive Order 11246, Non-discrimination in Employment and Affirmative Action, as amended at CFR Part 60-1 and Appendix A to Subpart A of Part 471.

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