



Purchase Order Terms and Conditions

1. **Definitions:** "Company" means the limited partnership named on the first page of the Purchase Order to which these Terms and Conditions are attached. "Purchase Order" means these Terms and Conditions together with all documents specifically referenced herein and any written purchase order, contract or agreement between these parties, which describes the goods and/or services to be provided by Seller to Company. "Goods and Services" means the products, materials and/or services sold by the Seller and purchased by the Company under the Purchase Order. "Seller" means any individual, corporation, or other entity who is to supply Goods and Services to be purchased by the Company pursuant to a Purchase Order. "Terms and Conditions" means the terms and conditions herein.
2. **Purchase Order Form:** In the event the Seller issues its own form of purchase order to the Company, these Terms and Conditions shall be incorporated into and form part of such purchase order. Company shall not be bound by any additional, different or conflicting terms, whether printed or otherwise, in any other communication between the parties (including on any of Seller's forms, letter or papers), it being understood that these Terms and Conditions shall prevail notwithstanding any such additional, different or conflicting terms.
3. **Acceptance:** This Purchase Order will become legally enforceable upon receipt by the Company of an acknowledgement signed by the Seller. Any changes to this Purchase Order are not binding on Company without the Company's written consent of the same, signed by an authorized representative of the Company.
4. **Price:** The Seller warrants that the prices set forth in the Purchase Order include all charges, costs, taxes, fees, and assessments, and that no additional amounts of any kind, including, but not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing or crating will be charged to Company. Unless otherwise specified, all prices will be FOB the destination specified by the Company. Seller shall not be entitled to any price escalations, regardless of the cause or circumstances causing any such price escalation.
5. **Terms of Payment:** Provided the obligations of the Seller under the Purchase Order have been satisfied in full, payment shall be made by the Company to the Seller at the month-end following the date of the invoice unless otherwise specified.
6. **Insurance and Indemnity:** Seller, at its sole cost and expense, shall defend, indemnify and hold harmless Company from any claims, suits, judgments, fees and costs (including attorney's fees) relating in any way to and arising out of the Goods or Services including death, personal injury, or damage to property. Seller agrees to procure and maintain, with a company lawfully authorized to do business in the jurisdiction where the Goods and Services are to be supplied and with a minimum rating of A.M. Best's "A" or its equivalent and a financial strength rating of VII or its equivalent, Commercial General Liability insurance that names Company as an additional insured, with limits not less than \$500,000 per occurrence and not less than \$500,000 Products/Completed Operations. Seller shall provide to Company evidence of such coverage in the form of a Certificate of Insurance and providing for thirty (30) days' notice to Company prior to cancellation.
7. **Warranty:** The Seller's warranties of the Goods and Services are included as part of the Price and are as set forth in the plans and specifications for the project, unless otherwise stated in writing.
8. **Time of Essence:** Time of shipment and of other aspects of performance hereunder are of the essence of this Contract.
9. **Quality:** Seller warrants that it has and will maintain an adequate quality control system with respect to the production, fabrication, manufacturing and delivery of the Goods and Services and that it creates and maintains quality control reports, certificates, affidavits and other such records concerning the Goods and Services. Seller agrees that it has received and read all specifications for the project which govern the quality of the Goods and Services and the provisions of any warranty requirements to be provided by the Seller. The Seller agrees that, upon request and at no additional charge, it will promptly furnish authenticated copies thereof, as well as applicable certificates of conformance and/or compliance and subcontractor and Seller warranty certificates, as applicable, all in a form acceptable to the Company.
10. **Inspection:** Seller agrees that Company shall have the right to inspect, test or audit all products and materials comprising the Goods and Services, at any time, upon reasonable notice. Seller shall provide all necessary assistance and the facilities reasonably required to perform the same. If conducted prior to shipping, such inspection, test and/or audit will be performed by the Company or its agent during normal business hours, upon reasonable notice and at no additional cost. Upon inspection, the Company may give the Seller notice of rejection or revocation of acceptance, as the context requires, notwithstanding any payment, passage of title, approval or prior test or inspection conducted by a person other than the Company or its agent. Under such circumstances, the Company will have the right, in addition to any other rights and remedies it may have, in its sole discretion: (1) to return any and/or all non-conforming products and/or materials to the Seller for replacement, reimbursement, credit, or repair; (2) to require the Seller to rework, repair, and/or replace the defective products and/or materials with all costs associated therewith to be charged to and be paid by the Seller; or (3) to hold any or all non-conforming products and/or materials, at the Seller's risk and expense, until they can be repaired, replaced or disposed of in accordance with the Company's instruction. Neither the inspection, testing, nor auditing of such products and materials, nor the failure to do so, shall constitute acceptance of the Goods and Services, relieve the Seller from any obligation under this Agreement or limit, revoke or waive any right or remedy of the Company with respect to the Seller's performance hereunder.



11. **Mediation and Arbitration:** Any claims arising out of or related to the Purchase Order ("Claims") shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party. Mediation shall be conducted by a neutral third-party agreed to by Company and Seller, and shall be held in the place where the project for which the Goods and Services are or were to be delivered is located, unless another location is mutually agreed upon. Any demand for arbitration and legal or equitable proceeding instituted by or against either Company or Seller shall be stayed pending the outcome of the mediation. The parties shall share the mediator's fee equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any Claims that are not resolved through mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party. The Arbitration shall be conducted by a neutral third-party agreed to by Company and Seller, and shall be held in the place where the project for which the Goods and Services are or were to be delivered is located, unless another location is mutually agreed upon. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The Federal Arbitration Act shall govern this clause.
12. **Amendments and Changes:** The Company may, from time to time, request amendments to or changes in the Goods and Services within the general scope of the Contract, without invalidating the Purchase Order. If such change causes an increase or decrease in the cost of or the time required for fabrication or delivery of the Goods and Services, an adjustment will be made to the Price and to the delivery schedule, as agreed to by the parties.
13. **Waivers:** Any failure by the Company to insist upon strict performance of any of these Terms and Conditions shall not be deemed a waiver of any rights or remedies that the Company may have unless expressed in writing and, in any event, shall not be deemed a waiver of any subsequent breach or default by Seller of the terms and conditions contained herein.
14. **Governing Law:** The Purchase Order shall be interpreted in accordance with the laws of the place where the Goods and Services are to be supplied. The parties hereby submit to the jurisdiction and venue of the courts sitting in the state and federal courts of the place where the Goods and Services are to be supplied.
15. **Assignment or Transfer:** The Purchase Order shall not be assigned, sold or transferred by Seller without the prior written consent of the Company.