



Purchase Order Terms and Conditions

1. **Definitions.** "Company" means the Flynn Group of Companies, which includes Flynn BEC LP, Flynn Mid-Atlantic LP, and Flynn Midwest LP. "Contract" means these Terms and Conditions together with all documents specifically referenced herein and any written purchase order, contract, or agreement which attaches, incorporates, or otherwise references these Terms and Conditions. "Goods and Services" means the products, materials, and/or services sold by the Seller and purchased by the Company under the Contract. "Main Contract" means and includes all of the following documents: (1) the contract between the Company (or Company's client) and the project's owner (the "Prime Contract"); (2) the subcontract between the Company and Company's client (if applicable); (3) any of the generally, supplementary, or special conditions and addenda to either (1) or (2); and the project's specifications and drawings referenced in (1) or (2). "Seller" means any individual, corporation, or other entity who is to supply Goods and Services to be purchased by the Company pursuant to a Contract. "Terms and Conditions" means the terms and conditions herein.
2. **Purchase Order Form.** The Contract expressly limits Seller's acceptance to the terms hereof. The Contract's terms and conditions prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with the Order. 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. The 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 Contract will become legally enforceable upon either: (a) receipt by the Company of an acknowledgement signed by the Seller; or (b) the Seller proceeding to perform the Contract, even if no signed acknowledgment has been returned to the Company. Any changes to this Contract are not binding on Company without the Company's written consent of the same, signed by an authorized representative of the Company. Without the written consent of the Company's authorized representative, no additional or different terms proposed by the Seller in its acknowledgement will be effective to modify the Contract and the Seller will be deemed to have accepted the Contract without such modifications. These Terms and Conditions shall supersede any terms and conditions attached hereto by the Seller or contained in any document produced by the Seller and purporting to be part of the Contract.
4. **Contract Documents.** The Seller is bound to the Company by all the terms of the Main Contract directly or indirectly applicable to the Goods and Services and assumes toward the Company all the duties, obligations, and responsibilities that the Company by the Main Contract assumes toward the project's owner and/or the Company's client, including but not limited to confidentiality, indemnity, and insurance requirements. The Company has the same rights and remedies with respect to the Seller as the project's owner and/or Company's client have with respect to the Company under the terms of the Main Contract. These Terms and Conditions and the Main Contract are intended to supplement and complement each other and will be harmonized whenever possible. In the event they cannot be harmonized and barring other direction from the Company, the provision that imposes the greater duty or higher standard controls; if that does not resolve the conflict, the Main Contract controls.
5. **Price.** The Seller warrants that the prices set forth in this Contract include all charges, costs, taxes, fees, and assessments, are complete and that no additional charges of any type, including, but not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating will be added without the Company's prior written consent. Unless otherwise specified, all prices will be FOB the destination specified by the Company. The Seller shall not be entitled to any price escalations, regardless of the cause or circumstances causing any such price escalation. The Seller further warrants that the prices set forth in this Contract are the lowest prices charged for goods and services sold by the Seller to its other customers. If after execution of this Contract, but prior to payment by the Company for the Goods and Services, the Seller (1) sells or offers to sell, products or services substantially similar to the Goods and Services to another customer at a lower price; (2) offers a reduction in price to any customer already purchasing products and services substantially similar to the Goods and Services; or (3) sells or offers to sell products or services substantially similar to the Goods and Services on commercial terms that are, in the Company's reasonable judgment, more favorable than those set forth in the Contract, such lower price or more favorable terms will be applicable to the Goods and Services hereunder.
6. **Terms of Payment.** Provided the obligations of the Seller under the Contract have been satisfied in full, no later than 30 days following the Company's inspection and acceptance of the Goods and Services, the Seller shall submit an invoice to the Company for payment of the Goods and Services. Subject to the requirements of applicable mechanics or materialmen lien laws, payment shall be made by the Company to the Seller month-end following the date of the invoice subject to approval of such invoice by the Company and any setoffs permitted by the Contract, if any. Notwithstanding the foregoing, all Payments are subject to and conditioned upon the following:
 - A. the Company's receipt of proof of insurance of the Seller which complies with the Contract;
 - B. the Company's receipt of a release of all actual or potential bond and lien claims (including claims against the project's owner, the Company, contractor, and surety bonds, if applicable) on a form that is acceptable to the Company, which is effective through the end of the previous month in the case of a progress payment or is effective with respect to the entire project in the case of a final payment, executed in writing and under oath by the Seller and its suppliers and subcontractors, relating in any way to the Goods and Services;
 - C. sufficient proof that no lien has been filed, no bond claim has been made, and no threat of a lien or bond claim is pending, by the Seller or by any supplier or service provider of the Seller, arising out of or relating in any way to the Goods and Services;
 - D. the Company receiving payment for the Goods and Services from the Company's client.

Payment shall not be interpreted or construed as acceptance of defective or deficient work, or defective or deficient Goods and Services, and the Company reserves the right to deduct or setoff from any amount otherwise due to the Seller, whether owed to the Seller under the purchase order governing the Goods and Services, or any other purchase order, any amount due to the Company by the Seller for claims of any nature whatsoever, whether or not related to a purchase order, including claims which may exist now or hereafter arise.



7. **Product Warranty and Guarantee.** The Seller's warranties of the Goods and Services are included as part of the Purchase Order price and are as set forth in the plans and specifications for the project or the Main Contract, unless otherwise stated in the Purchase Order or in writing and signed by Company's authorized representative. This Section 7 establishes minimum product warranty and guarantee requirements. If (1) the Seller customarily provides a warranty or guarantee that exceeds the requirements otherwise stated in this Section 7, (2) the Seller submits a warranty or guarantee with any quote, bid, or similar submission that exceeds the requirements otherwise stated in this Section 7, or (3) applicable law or industry practice provide a warranty or guarantee that exceeds the requirements otherwise stated in this Section 7, then the Seller shall provide the greater warranty or guarantee.
- A. IGU (Insulated Glass Units), Monolithic, Tempered and Heat Strengthened Glass
The Seller shall deliver the Goods and Services on or before the corresponding "Required Date" noted in the Purchase Order or as otherwise agreed to writing by the Company (the "Delivery Date"). If no Required Date is specified in the Purchase Order, the Seller shall deliver such Goods and Services within thirty (30) days of the Seller's receipt of the Purchase Order. If the Seller fails to deliver the Goods and Services in full by the Delivery Date, the Company, without waiving its rights, may pursue any combination of the following: (a) terminate the Purchase Order immediately by providing written notice to the Seller; (b) purchase replacement goods and services from another seller; or (c) accept late delivery. In any event, Seller shall indemnify the Company against any losses, claims, damages, and reasonable costs and expenses directly attributable to the Seller's failure to deliver the Goods and Services by the Delivery Date.
- B. Gaskets & Plastics
The Seller shall provide a product manufacturer written warranty that all gaskets and plastics will retain their shape, resist weathering, function in extreme temperatures, resist tearing, prevent air leaks and water penetration, and otherwise perform as required by the Main Contract and as otherwise function in the manner customarily expected by industry standard.
- C. Paint Finishes (Duranar, XL, or XLE)
The Seller shall provide the paint manufacturers' or the tier 2 contractors' or suppliers' written 'pass-through' warranties for workmanship on paint finish and warrant the products and/or materials will not chalk, crack, peel, fade or change color more than five (5) E units as determined by ASTM D 2244. Such warranty shall be for a period of ten (10) years from date of substantial completion of the project. The Seller shall be responsible for repairing, repainting, or replacing materials when the Company determines the Seller has not complied with warranty and guarantee requirements.
- D. Anodized Finishes
The Seller shall provide the anodizers manufacturers' or the tier 2 contractors' or suppliers' written 'pass-through' warranties for workmanship on anodizing finish and warrant the product to be free from cracking, flaking, blistering, and subsequent chemical reaction due to caustic residues remaining from the anodizing process for a period of 5 years from substantial completion of the project, or such other time that is agreed in writing. The Seller shall be responsible for repairing, re-anodizing or replacing materials when the Company determines the Seller has not complied with warranty and guarantee requirements.
- E. Aluminum Composite Material (ACM)
The Seller shall be responsible that all aluminum composite material (ACM) products it provides to the Company meet or exceed the ASTM standards, as it relates to the "FR" and "PE" quality requirements. The Seller shall further provide the manufacturer's written 'pass-through' warranty for workmanship on paint finish and warrant that the material will not peel, consist of any chipping, cracking, or, exhibit discoloration in the paint and lamination finishes. Such warranty shall be for a period of ten (10) years from date of substantial completion of the project.
- F. Ceramic Panels/Tiles
The Seller shall be responsible that all ceramic panels or tile products it provides to the Company meet or exceed the ASTM standards, as it relates to the project specifications. The Seller shall further provide the manufacturers' written 'pass-through' warranties for workmanship on finishes and warrant the material will not fade or, exhibit discoloration in the finish. Such warranty shall be for a period of ten (10) years from date of substantial completion of the project.
8. **Delivery.**
- A. The Seller shall deliver the Goods and Services on or before the corresponding "Required Date" noted in the Purchase Order or as otherwise agreed to writing by the Company (the "Delivery Date"). If no Required Date is specified in the Purchase Order, the Seller shall deliver such Goods and Services within thirty (30) days of the Seller's receipt of the Purchase Order. If the Seller fails to deliver the Goods and Services in full by the Delivery Date, the Company, without waiving its rights, may pursue any combination of the following: (a) terminate the Purchase Order immediately by providing written notice to the Seller; (b) purchase replacement goods and services from another seller; or (c) accept late delivery. In any event, Seller shall indemnify the Company against any losses, claims, damages, and reasonable costs and expenses directly attributable to the Seller's failure to deliver the Goods and Services by the Delivery Date.
- B. The Seller shall deliver all products and materials to the address specified in the Purchase Order (the "Delivery Point") at times, and under conditions, specified by the Company. The Seller shall pack all goods for shipment according to the Company's instructions or, if there are no instructions, in a manner sufficient to ensure that the goods are delivered in undamaged condition.



9. **Quality.** The Seller warrants that it has and will maintain an adequate quality control system with respect to the production, manufacturing, supply, and delivery of the Goods and Services and that it creates and maintains adequate 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.** The Seller agrees that the Company shall have the right to have all products and materials comprising the Goods and Services inspected, tested, and/or audited, as the context requires, either before shipping or within a reasonable time after delivery. If conducted prior to shipping, such inspection, test, and/or audit shall be performed by the Company or its agent during normal business hours, upon reasonable notice, and at no additional cost. The Seller shall provide all necessary assistance and the facilities reasonably required to perform the same. 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. **Import/Export Compliance.** Transferable credits or benefits associated with the products and/or materials comprising the Goods and Services, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to the Company unless prohibited by applicable law. The Seller will provide the Company with all information and records relating to the products and/or materials comprising the Goods and Services necessary for the Company to: (1) receive these benefits, credits, and rights; (2) fulfill any customs obligations, origin of making or labeling requirements, and certification or local content reporting requirements; (3) claim preferential duty treatment under applicable trade preference regimes; and (4) participate in any duty deferral or free trade zone programs of the country of import. The Seller will be responsible for strict compliance with all legal, regulatory, and administrative requirements associated with any importation or exportation of products and/or materials comprising the Goods and Services, including obtaining any required licenses or approval and, unless otherwise agreed between the parties elsewhere in this Agreement, the payment of all associated fees, duties, and taxes not included in the quote package.
12. **Excise Tax and Custom Duty Remission.** Upon request of the Company, the Seller shall furnish to the Company any customs duty and excise tax remission claims available to the Seller in connection with the export by the Company of any products imported by the Seller and provided to the Company under this Agreement, or incorporating, or manufactured by the Company from, such products. Without limitation, the Seller will (1) provide all information with respect to such imported products necessary to complete any such customs duty and excise tax remission claims to be filled by the Company, including Customs and Border Protection entry numbers, entry dates, quantities and description of goods, custom values, and rates and amounts of custom duties and excise tax paid by the Seller, and (2) execute applicable certificates of delivery and other documents as necessary in connection with the Company's remission claims.
13. **Limitation of Company Liability.** Notwithstanding anything to the contrary in the Contract, the Company's total aggregate liability to the Seller arising out of or relating to the Contract, the Purchase Order, or the Goods and Services, whether based in contract, warranty, tort, negligence, strict liability, statute, or any other legal or equitable theory, shall not exceed the purchase price actually payable by the Company for the Goods and Services giving rise to the claim. In no event shall the Company be liable to the Seller for any indirect, incidental, consequential, special, exemplary, punitive, or similar damages, including lost profits, lost revenue, loss of business opportunity, or loss of goodwill, even if the Company has been advised of the possibility of such damages.
14. **Insurance and Indemnity.** The Seller, at its sole cost and expense, shall defend, indemnify, and hold harmless the 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, or the Seller's obligation to provide the Goods or Services, including, but not limited to, death, personal injury, damage to property, or other financial loss. The 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 and any entity required by the Main Contract as an additional insured, with limits not less than \$1,000,000 per occurrence and not less than \$1,000,000 Products/Completed Operations, or such other higher limits that may be required by the Main Contract. The Seller shall provide to the Company evidence of such coverage in the form of a Certificate of Insurance and providing for thirty (30) days' notice to the Company prior to cancellation.
15. **Schedule.** Time is of the essence in the Seller's performance of the Contract. The Seller warrants that it has familiarized itself with the time requirements of the Contract, the Main Contract, and the Company's project schedule and warrants that all necessary costs to meet the required completion or milestone dates in each are included in the Purchase Order price. The Seller is liable to the Company for all costs, damages, expenses, and claims (collectively, "Damages") the Company sustains as a result of the Seller's delay in providing the Goods and Services. The Seller shall promptly pay the Company, or the Company may withhold under the Contract or any other contract between the Company and Seller, such amounts as the Company reasonably deems necessary to indemnify the Company against Damages and potential damages or compensate the Company for any Damages assessed, or with the potential to be assessed, against the Company under the Main Contract to the extent caused, in whole or in part, by the Seller or those third parties for whom the Seller is responsible. Permitting the Seller to continue providing Goods and Services after the time for performance has been delayed or expired does waive the Seller's Damages under this section or other damages for which the Seller may be liable.



16. **Default.** If, in the sole opinion of the Company, the Seller should refuse, fail, or neglect to:

- A. Supply new Goods and Services of the quality required by the Contract and Main Contract;
- B. Provide the Goods and Service in accordance with the Contract or Main Contract requirements;
- C. Sufficiently progress its provision of the Goods and Services so as not to delay the general progress of the Company's work or the progress of the project; or
- D. Sufficiently progress or perform any provisions contained in Contract Documents, including the Main Contract;

then the Seller shall be in default ("Default"). The Company shall give the Seller written notice specifying such Default, and if such Default continues for a period of twenty-four (24) hours following such written notice, the Company may, in its sole discretion and without prejudice to any other right or remedy it may have, take any measures which, in its sole opinion, are necessary to expedite and or ensure the progress and completion of the Seller's obligations, including, but not limited to:

- A. Requiring the Seller to accelerate its provision of the Goods and Services as necessary;
- B. Terminating the Purchase Order; and
- C. Withholding payments from the Seller until such Default is cured and the Company has recovered the expenses to which it is entitled.

All Damages incurred by the Company as a result of the foregoing, plus 15% markup, which represents a reasonable allowance for overhead and any extended general conditions, may be either deducted from payments due to the Seller under the Contract or any other contract between the Company and Seller, or shall be paid by the Seller to the Company upon demand. The provisions of this Section shall not waive or impair the Company's rights under any other provision of the Contract.

17. **Confidentiality.** In addition to complying with any confidentiality requirements in the Main Contract, Seller shall keep confidential and not disclose to any third party, without Company's prior written consent, any nonpublic information relating to this purchase order or Company, including without limitation information regarding the materials, goods, services, specifications, pricing, drawings, samples, data, processes, or project plans (collectively, "Confidential Information") that Seller receives, accesses, or develops in connection with Seller's performance. Seller may use Confidential Information solely to perform its obligations under this purchase order and shall restrict disclosure to its employees who have a need to know for such purpose and who are bound by confidentiality obligations at least as protective as those set forth herein. Seller shall be responsible for any unauthorized use or disclosure by its representatives and shall promptly notify Company of any actual or suspected unauthorized disclosure.
18. **Termination.** The Company may terminate this Contract in whole or in part, without cause and at any time by issuing notice of such termination in writing (via email, facsimile or mail) to the Seller. Upon termination, the Seller shall immediately cease all activities related to its provision of the Goods and Services and use all commercially reasonable efforts to minimize and mitigate its costs in connection with the Goods and Services. The Company shall be liable only for payment of Goods and Services properly furnished through the date of termination. The terms of the Contract shall survive any such termination.
19. **Severability.** If any term or provision of this Contract is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction.
20. **Survival.** Provisions of this Contract which by their nature should apply beyond the term of this Contract, or termination hereof, will remain in force after any termination or expiration of this Contract including, but not limited to, the following provisions: Insurance and Indemnity, Governing Law, and Survival.
21. **Mediation and Arbitration.** Any claims arising out of or related to the Contract ("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 the Company and the 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 the Company or the 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 the Company and the 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.
22. **Amendments and Changes.** The Company may, at any time, amend or make changes to the Contract in writing, acting reasonably, and the Seller will continue performance of its obligations hereunder as so amended and/or changed. If such changes cause an increase or decrease in the Seller's cost of, or time required for, performance of its obligations hereunder, an equitable adjustment will be made to the price and/or delivery schedule, as the context requires. Notwithstanding the foregoing, the Seller shall continue performance pending final agreement or determination of any equitable adjustment. Any price adjustment shall be limited to the Seller's demonstrable, reasonable, direct costs caused by the Company's written amendment or change, plus markups not exceeding ten percent (10%), and shall exclude home office overhead, profit, and other indirect costs unless expressly authorized in writing by the Company.



23. **Equal Opportunity.** When required by the Prime Contract, Main Contract, or applicable law, the following notices apply to the Company as prime contractor and the Seller as subcontractor:
- A. *The following applies to purchase orders of \$15,000 or more: This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.*
 - B. *The following applies to purchase orders of \$150,000 or more: This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment qualified protected veterans and individuals with disabilities. Contractor/subcontractor agrees to comply with all the provisions set forth in 29 CFR Part 471, Appendix A to Subpart A (Executive Order 13496).*
24. **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 in the terms contained herein.
25. **Governing Law.** The Contract shall be interpreted in accordance with the laws of the place where the Goods and Services are to be delivered. 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 delivered.
26. **Headings.** The insertions of headings are for the convenience of reference only and shall not affect the construction or interpretation of the Contract.
27. **Further Assurances.** Upon acceptance of the Contract, the Company and the Seller shall execute, acknowledge, and deliver such instruments and take such other actions as may be reasonably necessary to fulfill their respective obligations under the Contract.
28. **Assignment.** The Seller shall not assign, sell, transfer, delegate, or subcontract the Contract, any portion of the Goods and Services, or any key supplier or sub-supplier, whether voluntarily or by operation of law, including by change of control, merger, amalgamation, or reorganization, without the Company's prior written consent. The Seller remains fully responsible for all sub-tier performance.