

1. General

These Terms and Conditions apply to the Purchase Order to which they are attached and bind Seller and Purchaser to the exclusion of any provision of any document furnished by Seller or Purchaser that is inconsistent with these Terms and Conditions. Any additional or different terms or conditions proposed by Seller shall not become a part of this Purchase Order unless expressly accepted in writing by Purchaser. It is agreed and understood that this Purchase Order (including any documents attached hereto or referred to herein) represents the entire and only agreement between the parties respecting the subject matter hereof and supersedes all prior negotiations or arrangements between the parties. Any representation, affirmation of fact, or any promise or condition in connection therewith not incorporated herein shall not be binding on either party. No change, modification, renewal, ratification, rescission, termination, notice of termination, discharge, abandonment, or waiver of this Purchase Order or any of the provisions hereof, or any representation, promise, or condition relating to this agreement shall be binding upon Purchaser unless made in writing and signed by an authorized representative of Purchaser. In the event of any inconsistencies between Purchase Order documents, these Terms and Conditions shall govern. This Purchase Order is in support of a prime contract between Purchaser, or an affiliate, and its client, the Owner, who shall be a third-party beneficiary of this Purchase Order. Purchaser may assign this Purchase Order to Owner at any time, in its sole discretion, and thereafter all of Purchaser's obligations to Seller under this Purchase Order shall cease to exist. Seller shall at all times be an independent contractor as to all Goods provided.

2. Definitions

- 2.1 „Applicable Law“ means all applicable laws, enactments, statutes, codes, ordinances, treaties, regulations, standards, decrees, rules, decisions, judgments, orders, injunctions, interpretations, authorizations, directives, or requirements, including any governmental approval, applicable to the performance of the Goods and this Purchase Order, enacted, adopted, promulgated, entered or issued by any governmental authority having jurisdiction over the matter in question and which are in effect at the time in question.
- 2.2 „Backcharge“ shall mean an amount owing by Seller to Purchaser for costs incurred in accordance with other provisions of this Purchase Order due to non-conforming or defective Goods.
- 2.3 „Claims“ shall mean all claims, liabilities, demands, causes of action, damages, losses, costs and expenses, including attorneys' fees, awards, fines and judgments (in law or in equity), of every kind and nature whatsoever.
- 2.4 „Encumbrance“ means any mortgage, charge, pledge, lien, materialmen's lien, option, restriction, right of first refusal, right of pre-emption, third party right-of-interest, or any other lien, encumbrance or security interest of any kind in favor of any person in the Seller Group burdening the project, whether arising by agreement, statute or operation of Applicable Law, and any preferential arrangements between persons having a similar effect, except for any security interest.
- 2.5 „Facility“ shall mean the installation located at Owner's premises to which the items provided under this Purchase Order are to be installed.
- 2.6 „Goods“ shall mean any goods, materials, equipment, services or other items provided to Purchaser or Owner under this Purchase Order.
- 2.7 „Indemnitees“ shall mean Owner, Purchaser, their respective affiliates, parents, subsidiaries, divisions, and the directors, officers, agents, heirs, assigns, successors-in-interest, representatives and employees of all of the foregoing.
- 2.8 „Inspection Release“ shall mean the term used to advise Seller that an item has been inspected by Purchaser's representative at the factory and should be shipped to the project site. This "Release" does not relieve Seller of the responsibility to meet the requirements of the Purchase Order or attachments referenced herein.
- 2.9 „Owner“ shall mean the entity identified as such on the faceplate of the Purchase Order.
- 2.10 „Purchaser“ shall mean the entity specified as such on the faceplate of the Purchase Order.
- 2.11 „Purchase Order“ shall mean these Terms and Conditions, together with the face document and all attachments or exhibits, which collectively form the contract between Seller and Purchaser.
- 2.12 „Seller“ shall mean the party identified as such on the faceplate of the Purchase Order.
- 2.13 „Seller Group“ shall mean Seller, its Sub-suppliers of any tier, its and their respective affiliates, parents, subsidiaries and divisions, and the directors, officers, agents, heirs, assigns, successors-in-interest, representatives and employees of all of the foregoing.
- 2.14 „Sub-supplier“ shall mean a third party who supplies items to Seller for Seller's performance under this Purchase Order and includes, without limitation, all sub-suppliers, vendors, and subcontractors.

3. Prices/Taxes



- 3.1 All prices shown on the face of the Purchase Order are firm and fixed and not subject to adjustment or escalation, except by mutual, written agreement, or as expressly provided elsewhere in this Purchase Order.
- 3.2 Unless this Purchase Order specifically incorporates a statement instructing Seller not to include transactional taxes (sales, use, GST, VAT) imposed by any government authority, Seller has included such taxes in the sales price of this Purchase Order and shall pay such taxes to the appropriate governmental authority when due. In all instances, Seller shall show all transactional taxes as separate line items on its invoices for payment.
- 3.3 Seller shall defend, indemnify, and hold Purchaser and Owner harmless from liability to any competent authority resulting from the failure of Seller to make timely payment of, or timely filings with respect to, any obligations to pay taxes incurred with respect to the work. This indemnity shall include all penalties and interest imposed in addition to the taxes due as a result of the failure of Seller to comply with reporting, filing, payment or procedural requirements. Interest, penalties, or other liabilities arising from such failures shall not be allowed as costs and shall be for Seller's account.

4. Changes/Substitutions

Purchaser may at any time make changes in any one or more of the following via written notification: (I) drawings, plans, designs and specifications, (II) quantities, (III) delivery schedule, and (IV) place, manner or time of delivery. Seller shall notify Purchaser of any effect in the price or delivery of the Goods within five (5) days after Seller's receipt of a change notification. No claim for an increase in price or schedule extension shall be recognized, and Seller shall be deemed to have waived any such claims, unless Seller furnishes Purchaser such 5-day written notice which must include, at a minimum, the amount of any requested price increase and/or any requested schedule extension. Any adjustment to the price or schedule must be agreed to in writing by Seller and Purchaser. No substitutions, alterations or modifications to any portion of the specified approved Goods will be allowed without the written consent of Purchaser. To the extent permitted by Applicable Law, Seller shall promptly comply with all instructions, authorizations and notifications given by Purchaser in writing, even if Seller and Purchaser have not agreed on the appropriate adjustment to the price or schedule, if any.

5. Delivery Period

Time is of the essence and delivery must be completed in accordance with the delivery schedule set forth in the Purchase Order. If, in Purchaser's sole yet reasonable opinion, Seller's performance is such that it fails to make conforming shipment by the date(s) agreed to in this Purchase Order, Purchaser shall be entitled, at its option, to terminate all or part of this Purchase Order for cause, without prejudice, to any other right of

Purchaser or Owner.

6. Expediting/Inspection

- 6.1 Seller shall only deliver Goods that conform to the requirements of this Purchase Order. Purchaser reserves the right to inspect or test any portion of the Goods at any time during fabrication, shipment or delivery. Purchaser and Owner shall be granted access to (I) Seller's plant or other facilities and (II) its Sub-suppliers' plants involved in manufacture or production of any portion of the Goods. Such inspection does not relieve Seller of any of its obligations under this Purchase Order and the failure of Purchaser to ascertain or discover defects shall in no way be a waiver of any warranties or other rights. Purchaser may waive inspection at point of manufacture without waiving its right of inspection at destination. If Goods are rejected, they may be returned for credit, refund or replacement at Seller's risk and Seller will pay all handling and transportation charges both ways.
- 6.2 Purchaser shall have the right to reject, at any time, any portion of the Goods, including, but not limited to, services, materials, equipment, installation, tools or supplies, which in Purchaser's sole judgment, do not comply with Seller's representations, warranties, or guarantees, do not conform to the stipulated specifications, or are improper or of inferior design or workmanship. Seller shall, if so directed by Purchaser, promptly repair, rectify or make good any part of the Goods, so rejected, at no additional cost to Purchaser.

7. Payments

- 7.1 All progress payments and the final payment referenced in this Purchase Order are contingent upon and subject to Purchaser's acceptance of all Goods furnished. The aging of invoices shall be based on the date invoices, in form reasonably acceptable to Purchaser, are received by Purchaser, and not the invoice date. Unless otherwise specified in this Purchase Order, no invoice shall be issued by Seller prior to the delivery and acceptance by Purchaser of conforming Goods.
- 7.2 Anything to the contrary herein notwithstanding, the parties hereto acknowledge and agree, Purchaser, in its sole yet reasonable discretion, may withhold ten percent (10%) of the purchase order price as retention for Seller's failure to deliver the Goods and/or provide complete documentation associated therewith, including but not limited to engineering data or user documentation, within the agreed delivery schedule as provided in this Purchase Order.

8. Release of Liens

- 8.1 Seller shall protect and defend the Indemnitees and the property upon which the Goods are to be installed or furnished, including all improvements, structures, equipment, machinery and other property now or hereafter placed thereon, from any Encumbrances arising out of or in connection with the Goods furnished. Seller agrees to the fullest extent permitted by appli-

cable law, to release, defend, indemnify, save and hold harmless the indemnitees from and against any and all claims arising out of Seller's failure to meet its obligations under this Article 8. Upon request, Seller shall furnish to Purchaser a fully executed Release of Lien in the form attached hereto as "Attachment E" from Seller and all Sub-suppliers pertinent to this Purchase Order for progress payment(s) and final payment. Provision of an appropriate (in the reasonable opinion of Purchaser) Release of Lien shall be a condition precedent to Purchaser's obligation to make payment for Goods. Failure to comply will result in a delay of payments.

8.2 If there is evidence that Purchaser or Owner, or the property of either, might become liable for any claim or subject to any Encumbrance that is chargeable to Seller or its Sub-suppliers, Purchaser may at any time, on its own volition or at Owner's request, exercise any or all of the following:

A. Require that Seller post a bond to remove such Encumbrances, the cost of which shall not be reimbursable but shall be to Seller's account.

B. Retain out of payment due to Seller an amount (in addition to any retention) sufficient to indemnify Purchaser and Owner against such claim or lien. Purchaser may retain the amount withheld until Seller pays and discharges the Encumbrances or until Purchaser and Owner are satisfied that such Encumbrance is not valid. If the Encumbrance is valid (in Purchaser's sole yet reasonable judgment), Purchaser may pay and discharge the Encumbrances. If Purchaser pays and discharges such Encumbrances, then Purchaser may deduct the amounts paid from amounts due to Seller under the Purchase Order.

9. Title; Risk of Loss

Seller warrants good title to all Goods furnished hereunder. Title to all Goods covered by this Purchase Order shall pass from Seller to Purchaser on (a) the date all or such portion of said Goods is received at the designated shipping address, or as otherwise set forth elsewhere in this Purchase Order, or (b) the date payment for all or such portion of the Goods is made, whichever of the foregoing last occurs. Said transfer of title shall in no way affect Purchaser's rights as set forth in other provisions of this Purchase Order. Risk of loss shall pass from Seller to Purchaser when the conforming Goods are received at the designated shipping address or as otherwise set forth elsewhere in this Purchase Order.

10. Backcharges

10.1 In the event that Purchaser has to undertake any part of Seller's obligations under this Purchase Order or has to instruct another party to undertake any part of Seller's obligations, Seller shall be subject to Backcharges as follows:

10.1.1 Upon identification of a back-charge condition, Purchaser will notify in writing Seller's designated representative. Verbal

notification will be confirmed in writing to Seller within a reasonable time (in Purchaser's sole yet reasonable opinion) of the verbal notification. Purchaser will request Seller's recommended method of handling the back-charge condition. Purchaser will evaluate all recommended methods of correction and select the method most, in Purchaser's sole yet reasonable opinion, economical and advantageous to the project. Purchaser will notify Seller in writing of Purchaser's selected method of correction and Seller will first be given the opportunity to correct the condition within a time period as determined by Purchaser.

10.1.2 In the event that Seller fails to correct the back-charge condition in the required amount of time (as shall be determined by Purchaser in accordance with Section 10.1.1) or if an emergency exists making it impracticable (in Purchaser's sole yet reasonable opinion) for Purchaser to have Seller correct the back-charge condition, the following rates shall apply:

10.1.2.1 Actual cost of material, labor, equipment and supplies, plus ten percent (10%).

10.1.2.2 Actual cost charged to Purchaser by third (3rd) parties to perform Seller's obligations, plus ten percent (10%).

10.1.2.3 Purchaser will prepare an estimate of charges, if requested by Seller, as soon as practicable after the identification of a back-charge condition. Notwithstanding the foregoing, Purchaser's failure to deliver an estimate of charges will not prevent Purchaser from commencing corrective action in accordance with this Article 10.

10.1.3 Failure of Seller to accept back-charges shall neither constitute indemnity of Seller nor shall the back-charge be voided as a result of Seller's failure to accept.

10.1.4 Seller shall be liable for any back-charges the amounts of which may, in Purchaser's sole discretion, be (I) deducted from any amounts otherwise due from Purchaser to Seller or (II) invoiced to Seller. If back-charges are invoiced to Seller in accordance with this Section 10.1.4, Seller shall remit payment in full within fifteen (15) calendar days of its receipt of the subject invoice; Seller's failure to timely remit any such payment due in connection with this Section 10.1.4 shall constitute a material breach of this Purchase Order.

10.1.5 Purchaser's release of any retention monies will be withheld until all back-charges have been resolved to the satisfaction of Purchaser.

10.1.6 The aggregate of back-charges associated with any single claim will not exceed two times (2x) the value of the component or support in question, and in cumulative value shall not exceed the total value of the Purchase Order.

11. Property Rights



All drawings, blueprints, tracings, materials, or other items prepared and/or acquired by Seller for the furnishing of the Goods shall become the sole property of Purchaser, and free, unencumbered title thereto shall pass through Purchaser to Owner if agreed upon in a separate written agreement between Purchaser and Owner. All such items, as well as any items furnished hereunder by Purchaser to Seller, shall be promptly delivered / redelivered to Purchaser, if requested by Purchaser, upon completion or cancellation of this Purchase Order. No reproductions thereof shall be made except as authorized in writing by Purchaser. If any documents are identified in Addendum 1 to this Purchase Order as proprietary to Seller, Seller hereby grants to Purchaser and Owner a fully paid up, transferable, perpetual and non-exclusive license to use such documents for the purpose of inspection, installation, maintenance, repair, upgrade, improvement, modification, or operation of the Facility. Purchaser will not knowingly share any of Seller's proprietary information with any other fabricator. Seller's proprietary documents are for Purchaser's information only.

12. Insurance

12.1 If any personnel or agents of Seller or its sub-supplier come onto Owner's or Purchaser's property or Facility site in connection with this Purchase Order, Seller shall, at Seller's sole cost and expense, maintain in full force and effect the following minimum insurance during the life of this Purchase Order, including the warranty/guarantee periods:

12.1.1 Workers' Compensation consistent with the statutory requirements of the state where any work is to be performed. Employers Liability with limits of \$1,000,000 each employee for bodily injury by accident or disease, and \$2,000,000 per occurrence.

12.1.2 Commercial General Liability Insurance (Bodily Injury and Property Damage) including (I) Broad Form Contractual Liability to cover the liabilities assumed under this Purchase Order, (II) coverage for Products and Completed Operations, (III) coverage for explosion, collapse and underground hazards, and (IV) Sudden & Accidental Pollution Coverage. The limit of such insurance shall be in the minimum amounts of \$5,000,000 per occurrence and \$5,000,000 aggregate.

12.1.3 Business Automobile Liability Insurance covering owned, non-owned or hired vehicles, with bodily injury limits of at least \$1,000,000 for each person and \$5,000,000 per occurrence, and property damage liability limits of at least \$5,000,000 per occurrence.

12.1.4 Plus such additional insurance as may be required by the Purchase Order documents, including ocean cargo marine, all risk builder's risk, contractor's equipment, U.S. Longshoreman's and Harbor Workers' Compensation Act, and the Jones Act.

12.1.5 The minimum insurance limits to be provided by Seller pursuant to Sections 12.1.2 and 12.1.3, above, may be satisfied

by a combination of the underlying policies and excess or umbrella liability insurance, provided that the coverage under the excess or umbrella liability insurance is at least as broad as the underlying policies.

12.2 The policies of insurance provided by Seller under Section 12.1 shall contain a provision naming the Indemnitees as additional insureds (with the exception of Workers' Compensation insurance). Such additional insured coverage shall not be restricted to (I) "ongoing operations"; (II) coverage for vicarious liability; or (III) circumstances in which the named insured is partially negligent.

12.3 Before entering Owner's or Purchaser's property or the Facility site, or before transporting any Goods, Seller shall deliver to Purchaser an original certificate of insurance indicating that the insurance set forth herein is in effect, which provides for no less than thirty (30) days prior written notice to Purchaser from the insurer of material changes, cancellation or non-renewal. The insurance coverage provided must be on an occurrence basis, shall contain cross-liability endorsements allowing suit by one insured against another as if separate insureds, and shall be primary to any insurance carried by the Indemnitees which shall be non-contributing insurance.

12.4 Except for Workers' Compensation, the policies of insurance shall contain a provision naming the Indemnitees as additional insureds with respect to all activities of Seller in connection with this Purchase Order. Furthermore, Seller waives and shall require its insurers to waive, all present and future rights of subrogation against the indemnitees, and seller agrees, to the fullest extent permitted by Applicable Law. To release, defend, indemnify, save and hold harmless the indemnitees from and against any and all claims of subrogation arising under this Purchase Order.

13. Warranties

Notwithstanding inspection and acceptance by Purchaser of the Goods or payment, Seller hereby warrants that for a period commencing on the date of delivery and ending one (1) year from the date of first operation of the Facility in which the Goods are installed, all Goods will (I) be free from defects in materials, workmanship and design (to the extent design is furnished by or on behalf of Seller); (II) conform to all requirements of this Purchase Order, including all the specifications, drawings, samples or other descriptions referred to in this Purchase Order or furnished by Seller, and otherwise conform to generally accepted industry standards; (III) comply with all Applicable Laws and regulations governing the design or manufacture of such items; and (IV) meet or exceed the performance standards set forth in this Purchase Order or, if no performance standards are included in the Purchase Order, then the Goods will meet or exceed Seller's published specifications. Seller further warrants that all materials, goods, and equipment comprising the Goods shall be new and unused. This warranty does not include defects to the extent caused by (I) improper operation or maintenance, (II) normal wear and tear, abuse or misuse by Owner and/or Purcha-



ser, or (III) operation outside of the prescribed performance specifications. Seller shall, at Seller's expense, promptly repair or replace any Goods that fail to meet the foregoing and any resulting re-work or property damage caused by the defective Goods or such repair or replacement. In the event that Seller is unable or unwilling to take corrective action, then Owner or Purchaser may do so in accordance with Article 10 (Back-charges). Anything which is repaired or replaced pursuant to this warranty shall be warranted for an additional period of one (1) year from the date of repair or replacement. All warranties provided herein shall extend and inure to the benefit of Owner and may be enforced by Owner as if Owner were a party to this Purchase Order. Seller shall obtain, for the benefit of Purchaser and Owner, written warranties and guarantees which are consistent with and no less stringent than this Article 13 from its Sub-suppliers with respect to their materials, equipment, and workmanship to be incorporated into the Goods.

14. Assignments/Subcontract

14.1 It is expressly understood and agreed that Seller's responsibilities and obligations under this Purchase Order are non-delegable. Seller may not assign or subcontract any portion of its obligations pertaining to the Goods, nor any right or duty hereunder, without the prior written consent of Purchaser. Any such assignment by Seller without Purchaser's prior written consent shall be void. Prior to any sale or assignment of accounts receivable, Seller must notify Purchaser by certified mail. Failure to comply with this notification provision shall be considered a material breach of this Purchase Order. This notification is in addition to any notification required by Applicable Law. In the event that Seller assigns the monies due or to become due under this Purchase Order, or sells its accounts receivable, Purchaser shall have the right to withhold any and all payments otherwise due without penalty or liability of any kind. Such payments will be held in trust until Seller and its factoring company furnish proof satisfactory to Purchaser that Seller retains all rights of setoff and back-charge, that suppliers and other potential claimants will have priority over the factoring company, that Purchaser or Owner may pay directly the monies owed a supplier or other potential claimant and set off any such payments against monies owing Seller and/or its factoring institution, and that factoring company accepts warranty liability and will pay warranty claims.

14.2 If Purchaser authorizes Seller to subcontract any portion of Seller's obligations pertaining to the Goods or approves of Seller's subcontract or Purchase Order, such authorization or approval shall not relieve Seller of any of its obligations under the Purchase Order. Seller shall furnish such information relative to its Sub-suppliers as Purchaser may reasonably request. No subcontract or Purchase Order shall bind or purport to bind Purchaser, but each such subcontract or purchase order shall contain a provision permitting assignment of it to Purchaser or an affiliate upon Purchaser's written request.

14.3 Purchaser may assign this Purchase Order to Owner or any affiliate of Owner without Seller's consent by written notice to

Seller. In the event of such assignment, Seller agrees to look solely to Owner for the fulfillment of Purchaser's obligations hereunder.

14.4 If authorized to subcontract any portion of Seller's obligations, Seller shall, by written agreement with each of its Sub-suppliers, require each such Sub-supplier to be bound by terms consistent with this Purchase Order, including without limitation:

Seller's inclusion in all of its subcontracts and Purchase Orders the right of unilateral cancellation, with or without cause, by Seller of all or any portion of such subcontract or purchase order. Each subcontract or Purchase Order shall state that in the event of cancellation, Sub-supplier may claim only its properly supported out-of-pocket costs, plus a reasonable amount to compensate Sub-supplier for demonstrable related charges for the cancelled portions, all to be determined in accordance with generally accepted accounting procedures. In addition, the subcontract or Purchase Order shall state that title to materials or partially completed Goods, whose costs are included in the cancellation charges, shall pass to Purchaser and that Sub-supplier will be advised, in writing, as to the disposition of such Goods.

15. Termination for Cause

If Seller (I) fails to deliver the Goods within the specified time, fails to comply with or breaches any of these Terms and Conditions, becomes bankrupt or insolvent, fails to pay its debts as they become due, enters into administration or receivership, or fails to provide Purchaser, upon request, with adequate assurances of future performance and (II) fails to remedy any such failure within ten (10) days after receipt of written notice from Purchaser regarding the same (solely to the extent such failure is able to be remedied within a ten (10) day period), Purchaser may, by written notice to Seller, terminate all or any part of this Purchase Order for cause, without prejudice to any other rights and remedies of Purchaser at law or in equity. In the event of a termination for cause, Purchaser shall not be liable to Seller for payment of Goods not accepted, and Seller shall be liable to Purchaser for any and all damages provided for in this Purchase Order or by Applicable Law, not to exceed two times (2x) the value of remaining scope of this Purchase Order. If it is determined by a court of competent jurisdiction that Purchaser improperly terminated this Purchase Order for cause, such termination shall automatically be deemed a "termination for convenience" (as provided for in Article 16 herein) without any further action required from Purchaser.

16. Termination for Convenience

Purchaser reserves the right to terminate this Purchase Order, or any part hereof, for its sole convenience by written notice to Seller. Upon receipt of a notice of termination for convenience in accordance with this Article 16, Seller shall immediately stop work. Seller shall assign to Purchaser all rights, title and interest in fabricated and un-fabricated parts, work in process, completed

work, supplies and other material produced or acquired for the work terminated. Seller shall submit a complete inventory of Goods in process no later than thirty (30) days from the date of termination. Purchaser shall provide Seller with shipping or other disposition instructions for all items on the inventory list. Purchaser shall pay Seller the Purchase Order price for all completed Goods, not previously paid for, adjusted for any savings of freight or other charges. In addition, Purchaser shall pay to Seller, without duplication, the reasonable and necessary (in Purchaser's sole yet reasonable opinion) incurred costs (of which Seller, upon request from Purchaser, shall provide written evidence) of (I) producing partially completed goods; (II) settling and paying suppliers; (III) storage, transportation and other costs of preserving and protecting work in process; (IV) disposition of termination inventory in accordance with Purchaser's instructions; and (V) profit on partially completed Goods. In no event shall Purchaser be liable for or obligated to pay or compensate Seller for defective or non-conforming Goods, unabsorbed overhead, anticipated profits, or consequential damages of any kind or any amount in excess of the Purchase Order price. Incurred costs are subject to audit by a mutually acceptable independent third party. If a Purchase Order has pre-negotiated cancellation charges contained in the face document, then any payment to Seller pursuant to this Article 16 shall not exceed such charges.

17. Specifications and Codes

Seller is responsible for meeting all requirements of this Purchase Order, as well as all applicable specifications and codes. Unless otherwise specified elsewhere in this Purchase Order, all codes, regulations, specifications and other documents referenced in this Purchase Order shall be the most current edition, including addenda, in effect on the date that the Goods are delivered to Purchaser. Where required, Seller shall submit plans and specifications for Purchaser's review. Purchaser's review thereof shall in no way relieve Seller from fulfilling all requirements and obligations of this Purchase Order and the failure of Purchaser to ascertain or discover defects shall in no way be a waiver of any warranties or other rights.

18. Compliance with Law

18.1 Seller shall comply with all applicable federal, state and local Applicable Laws and regulations applicable to the Goods being furnished under this Purchase Order, including but not limited to:

18.1.1 Seller guarantees that all the Goods furnished by Seller in the performance of this Purchase Order will comply fully with the Occupational Safety and Health Act, as amended, and the regulations thereunder to the extent applicable and Seller shall indemnify the Indemnitees from and against any and all Claims arising from failure of such Goods to comply therewith.

18.1.2 Seller shall immediately contact Purchaser for instructions if Seller believes any part of this Purchase Order does not comply or may not comply with an Applicable Law, code or regulation. Failure to so notify Purchaser in a timely manner (in the sole yet

reasonable opinion of Purchaser) shall constitute Seller's acknowledgement that, to Seller's knowledge, all parts of this Purchase Order comply with Applicable Law, codes and regulations.

19. Indemnity

19.1 To the fullest extent permitted by Applicable Law and for good and valuable consideration, the receipt of which is hereby acknowledged, Seller shall defend, indemnify and hold harmless the indemnitees from and against any and all claims for personal injury (including death) or property damage resulting from or attributable to any defect or deficiency in any part of the Goods or arising out of the acts or omissions of Seller group. This contractual indemnity shall apply regardless of whether Seller is a party to the litigation or a non-party, regardless of Seller's immunity from suit, whether granted by statute or operation of Applicable Law, by judgement, or by a release of liability obtained from a claimant, regardless of whether the rules of liability under Applicable Law or regulations allocate liability differently than as agreed herein, and regardless of the joint or concurrent negligence of the indemnitees, but shall in no way apply to claims caused by the sole negligence of any indemnitee. This indemnity provision shall survive final payment or termination.

19.2 Notwithstanding any other provision herein, and to the maximum extent allowed by Applicable Law, Seller shall protect, defend, indemnify, release and hold harmless the indemnitees from and against any and all claims directly or indirectly arising out of, resulting from, or in connection with provision of the Goods, including ingress or egress, personnel, loading, or unloading of cargo, for any bodily injury, personal injury, death or illness suffered by any member of Seller Group, regardless of whether caused by or the result of, in whole or in part, the negligence (whether sole, concurrent, joint, active, or passive) or fault of any of the indemnitees or any other theory of legal, liability, including strict liability, premises liability, breach of contract, breach of warranty, the unseaworthiness of any vessel or inairworthiness of any aircraft, and including pre-existing conditions. It is the express intent of the parties (I) that the indemnity provided in this Section 19.2 be enforced to the maximum extent allowed by Applicable Law, and (II) that the duty to defend provided in this Section 19.2 is an independent obligation of the duty to indemnify and shall be separately enforceable even if this indemnity provision is unenforceable.

20. Waiver of Consequential Damage

Purchaser and Seller waive all Claims against each other for any special, incidental, punitive, indirect, or consequential damages, regardless of the theory of liability, including breach of this Purchase Order, breach of warranty, tort (including negligence), strict liability or otherwise, with the exception of claims, demands, or causes of action (I) arising under Article 19 – Indemnity, Article 23 – patent Indemnity and Article 25 – Confidential Information or (II) related to the fraud, willful misconduct, or gross negligence of any party to this Purchase Order or its employees, agents or representatives.



21. Excusable Delays

- 21.1 In the event that Seller is delayed in performing any of its obligations under this Purchase Order and such delay is caused by fire, flood or other act of God, epidemic or pandemic, war, acts of terrorism, or the public enemy, and which events are beyond the reasonable control of, and without any fault or responsibility on the part of Seller (an "Excusable Event"), such delay may be excused (an "Excusable Delay"). Seller shall give written notification to Purchaser within forty-eight (48) hours after becoming aware of any event which it believes to give rise to a claim for Excusable Delay.
- 21.2 The date of delivery or time for completion shall be extended by a period of time reasonably necessary (as determined by Purchaser) to overcome the direct effect of such an Excusable Delay. No extension of time shall be granted, and Seller hereby assumes the risk of delay or interruption, resulting from seasonal or other variations in temperature, humidity or precipitation, or other weather conditions reasonably anticipatable by an experienced supplier exercising prudent judgment (in Purchaser's sole yet reasonable discretion) under the same or similar circumstances. Seller's sole remedy for an Excusable Event is an extension of time for completion granted under this Section 21.2 and such remedy is exclusive of any other remedy Seller might have at law or equity.
- 21.3 Seller shall take all reasonably necessary steps to mitigate the effects of any Excusable Event. Should Seller fail, in Purchaser's sole yet reasonable opinion, to take all reasonably necessary steps to mitigate the impact of an Excusable Event, Purchaser may, in its sole discretion and after written notice to Seller, initiate measures that Purchaser, in its sole discretion, believes necessary to mitigate the delay, including but not limited to, the hiring of third parties to remove or relieve the impact of such Excusable Event and its direct or indirect effects. The costs of Purchaser's mitigating efforts shall be at Seller's sole expense. Purchaser may thereafter require Seller to resume full or partial performance of its obligations pertaining to the Goods. Alternatively, Purchaser, in its sole discretion, may decide to terminate this Purchase Order without liability or penalty.

22. Rights and Remedies

The remedies of Purchaser set forth herein are cumulative and in addition to any other remedies provided by law or equity. Waiver by Purchaser of any provision hereof shall not constitute a waiver of any other provision, nor shall it affect in any manner, any right or remedy of Purchaser.

23. Patent Indemnity

Seller warrants that the Goods will not infringe any United States or foreign patents. Seller agrees, To the fullest extent permitted by Applicable Law, to release, defend, indemnify and hold harmless the Indemnitees from and against any and All claims arising out of any such infringement or alleged infringement of

any patent, trademark, copyright, or other intellectual property rights Seller will, upon Purchaser's request, and at Seller's sole expense, defend any suit or action which may be brought against the Indemnitees by reason of any alleged infringement of any patent in the sale or use of the Goods.

24. Conflict of Interest

Seller shall exercise reasonable care and diligence to prevent any actions or conditions that may result in a conflict with Owner's or Purchaser's best interest. This obligation will apply to the activities of the employees and agents of Seller in their relations with the employees (and their families) of Owner and Purchaser arising from this Purchase Order and activities hereunder. Seller's efforts will include, but not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing or offering substantial gifts, extravagant entertainment, payments, loans, or other considerations for the purpose of influencing individuals to act contrary to Owner's and Purchaser's best interests. Any representative(s) authorized by Owner or Purchaser may audit any and all records of Seller for the sole purpose of determining whether there has been compliance with this Article 24.

25. Confidential Information

25.1 Seller's Obligations with Respect to Confidential Information

25.1.1 Seller acknowledges that Purchaser and Owner have developed or acquired Confidential Information that constitutes valuable proprietary information. As used herein, "Confidential Information" shall mean any and all documents and all business and technical information that are developed or acquired by Seller in performing the work, including but not limited to all information of Purchaser, Owner or their affiliates made available to Seller, directly or indirectly, pursuant to this Purchase Order or related to the work, and all information of Purchaser, Owner and their affiliates accessed by Seller in connection with the performance of work at the Facility of Owner. Purchaser may make available to Seller or its personnel, directly or indirectly, such Confidential Information, including, but not limited to, information to which the personnel of Seller may have access as a result of visits to the Facility, which information, in Purchaser's sole yet reasonable opinion, will be useful to Seller in properly performing any work under this Purchase Order. The extent to which Confidential Information is supplied to Seller or its personnel shall be at the sole discretion of Purchaser.

25.1.2 Seller shall hold in strict confidence all Confidential Information. In no event shall any disclosure of Confidential Information be made to any third party (except as expressly permitted in this Article 25), or in a patent application, or in any other form without the prior written approval of Purchaser.

25.1.3 Confidential Information shall not include the following information that Seller can show by convincing (in Purchaser's sole yet reasonable opinion) written evidence:

A. Information that is or becomes, without fault of Seller, its employees or Sub-suppliers, part of the public domain;

B. Information that Seller can show in written records was received by Seller, its employees or Sub-suppliers on a non-confidential basis from an independent third party that is under no obligation of confidentiality to Purchaser or Owner regarding the information;

C. Information that Seller can show in written records was already in the possession of Seller, its employees or Sub-suppliers at the time the information was made available to Seller, its employees or Sub-suppliers, directly or indirectly, from Purchaser or Owner, and was acquired by Seller, its employees or Sub-suppliers from a third party without a confidentiality obligation;

D. Information that is developed by or for Seller independently from any information received from Contractor or Owner;

E. Information that is required to be disclosed under the terms of a directive issued by a court or by a governmental authority, Seller agrees: (I) to notify Purchaser immediately of the existence, terms, and circumstances surrounding such request, (II) to consult with Purchaser on the advisability of taking legally available steps to resist or narrow such request, and (III) if disclosure of such information is required to prevent Seller from being held in contempt or subject or other penalty, to furnish only such portion of information as, in the written opinion of counsel satisfactory to Purchaser, it is legally compelled to disclose and to exercise its best efforts to obtain an order or other reliable assurances that confidential treatment will be accorded to disclosed information.

25.2 Ownership of Documents; Intellectual Property

25.2.1 All designs, drawings, specifications, reports, and other professional services documentation prepared for Seller's work in connection with this Project by Seller and its Sub-suppliers (including, without limitation, the Goods) shall be the property of Purchaser. Upon termination of this Purchase Order for any reason, Seller shall deliver all such documents to Purchaser, and Purchaser and Owner shall have the right to use the same for whatever purposes are necessary to complete the Project. Seller hereby transfers to Purchaser the copyright and all other intellectual property rights relating to designs drawings, specifications, reports and other professional services documentation prepared for this Project by Seller and its Sub-suppliers.

25.2.2 Seller further acknowledges and agrees all inventions, improvements or developments and processes, apparatus or products, or discoveries („Inventions“) whether patentable or unpatentable, based on the information and/or subject matter of this Purchase Order (including, without limitation, the Goods) shall be the property of the Owner. Seller further agrees to dis-

close promptly to Purchaser and Owner, but otherwise to keep confidential, all Inventions, whether patentable or not, that are conceived or reduced to practice based on information and/or subject matter of this Purchase Order. The duty of disclosure contemplated in this Section 25.2.2 applies to all Inventions arising from Seller's work or other services under and in connection with the Purchase Order, whether made solely by Seller or jointly with any others, or as a result of ideas developed in group discussions. In the case of patentable inventions, Seller agrees to assign all of Seller's rights therein to Purchaser without additional compensation and to assist Purchaser in securing patents at Purchaser's expense.

26. Publicity

Seller shall not use Purchaser's, Owner's or either of their respective affiliates' name, trade name, or trademarks in any advertising communication to the public, or make publicity releases or announcements concerning the Agreement, or related activities, in any format, without Purchaser's prior and express written consent.

27. Safety

27.1 Offsite Premises Safety: When shipping items or conducting activities at locations other than Seller's property and facilities, Seller shall:

27.1.1 Ensure that all personnel, whether employed by Seller or its Sub-suppliers, attend Purchaser's and Owner's safety orientation and be "safety certified" by the appropriate Area Safety Council prior to starting work;

27.1.2 Ensure that all Goods furnished under this Purchase Order comply with the Occupational Safety and Health Act of 1970 ("OSHA") and/or Mine Safety and Health Act of 1977 ("MSHA");

27.1.3 Provide a hazardous communication plan and Material Safety Data Sheets for all hazardous classified materials associated with the Goods to Purchaser, prior to mobilization or shipment;

27.1.4 Be solely responsible for furnishing the Goods in a safe manner consistent with all herein contained safety references and take whatever means necessary to ensure compliance by its Sub-suppliers;

27.1.5 Ensure compliance with the pollution control and environmental protection measures required by Purchaser, Owner and any and all Federal, state and local Applicable Laws;

27.1.6 Furnish construction equipment which meets or exceeds all of Purchaser's and Owner's safety requirements;

27.1.7 Ensure that all of Seller's employees wear a hard hat, safety glasses, steel-toed safety shoes, and any other safety related equipment required by Purchaser or Owner, whenever on the project site;

27.1.8 Ensure that full safety harnesses with 100% tie-off are utilized when Seller is working above grade or floor level and

27.1.9 Comply with Purchaser's and Owner's Health, Safety and Environmental guidelines and related instructions.

27.2 Manufacturing Premises Safety: Seller shall ensure that its ongoing operation complies with all applicable OSHA requirements. Upon request, Seller shall submit to Purchaser a copy of its safety procedures and, when visiting manufacturing facilities, Purchaser and its representatives shall (I) receive a copy of Seller's safety procedures and (II) be given a safety orientation.

28. Audit

Purchaser, or its duly authorized representative(s), shall have access at all reasonable times to all of Seller's and its Sub-suppliers' accounting, tax, invoicing, records, correspondences, instructions, plans, drawings, receipts, vouchers, data stored in computer files or microfiche, documents, and memoranda of every description pertaining to Goods under this Purchase Order for the purpose of auditing and verifying reimbursable costs and Seller's compliance with the terms and conditions of this Purchase Order. Seller shall maintain all supporting data and accounting records that are applicable to this Purchase Order in accordance with generally accepted accounting practices. Purchaser and its authorized representatives shall have the right to reproduce any of these documents. Seller shall preserve and shall cause its Sub-suppliers to preserve all aforesaid records, documents and memoranda for a period of two (2) years after completion or termination of this Purchase Order. Seller agrees to write the necessary provisions into its purchase orders and/or subcontracts with each of its Sub-suppliers that will ensure access by Purchaser, or its representative(s), to the applicable records of such Sub-supplier. Purchaser shall not be liable for any cost incurred by Seller or any of its Sub-suppliers resulting from any such audit.

29. Governing Law and Dispute Resolution

29.1 Governing Law

Unless otherwise stated in addendum 1, this Purchase Order shall be construed and governed by the laws of the State of Tennessee, without reference to its choice of law provisions. Seller agrees that any action pertaining to this Purchase Order must be brought and heard in the courts of Sevier County, Tennessee.

29.2 Dispute Resolution

29.2.1 The parties shall use reasonable efforts to resolve all disputes arising out of or relating to the Purchase Order through good faith negotiations. If negotiations within the project team fail to resolve the dispute, then each party shall nominate a senior representative of its management to meet at a mutually agreed location to resolve the dispute. If such negotiations do not result in a mutually acceptable resolution, then the dispute shall

be handled in accordance with Section 29.2.2.

29.2.2 Seller and Purchaser hereby acknowledge and submit to the sole and exclusive jurisdiction of the state specified in Section 29.1 above.

29.3 Enforcement Costs

To the extent either party hereto is required to enforce the terms of this Purchase Order as the result of the other party failing to fulfill its obligations under the terms of this Purchase Order, the party breaching the terms of this Purchase Order and against whom enforcement is sought shall pay all expenses and costs incurred by the prevailing party attempting to enforce the terms of this Purchase Order including but not limited to reasonable attorneys' fees and expenses.

30. FCPA Compliance

In the performance of its obligations under this Purchase Order, Seller shall comply strictly with all applicable anti-bribery laws, including, without limitation, the United States Foreign Corrupt Practices Act. In furtherance of Seller's obligations hereunder, Seller represents, warrants and agrees that, in connection with the performance of its duties hereunder, it shall not make any payments in money or any other item of value, or make any offers or promises to pay any money or any other item of value, to (a) any government official, (b) any foreign political party, (c) any candidate for foreign political office, or (d) any other person or entity, with the knowledge that such payment, offer, or promise to pay will be made to any government official for the purpose of influencing such government official to make one or more business decisions favorable to Purchaser, Owner or Seller. Seller further represents that no government official is a principal, owner, officer, employee or agent of any entity in which Seller has an interest, and that no government official has any material financial interest in the business of Seller. In the event of any breach by Seller of any of its representations, warranties or covenants contained in this Article 30, Purchaser may, in its sole discretion, and in addition to any other remedy provided herein or otherwise provided by Applicable Law, immediately terminate this Purchase Order without notice or indemnity and, in such event, Seller shall forever forfeit all rights to all fees and commissions which shall accrue and/or have been earned but which have not been paid as of the date of such termination.

31. General Limitation of Liability

A mutual Limitation of liability is established such that each party's liability under the current agreement shall in no case exceed the total value of the purchase order.