

Terms and Conditions of Purchase

1. COMPLETE AGREEMENT; APPLICABLE LAW

The "Contract" is the agreement between Purchaser and Supplier as set forth in (i) the body of the Purchase Order, (ii) these Terms and Conditions of Purchase, (iii) other documents as may be specifically incorporated into the Purchase Order such as supplemental terms and conditions, drawings, specifications, and schedules, and (iv) any subsequent amendments or change orders executed by both parties hereto. Contract shall become a binding agreement of Supplier and Purchaser at the time Supplier signs and returns an acceptance copy of Purchase Order and its insurance certificate or, in absence of a signed Purchase Order, the initiation of any portion of the Purchase Order requirements or acceptance of the Purchase Order according to UCC regulations. This Purchase Order constitutes the entire agreement between the parties, and all prior negotiations, proposals, and writings pertaining to this Purchase Order or the subject matter thereof, are superseded hereby. No agreement or understanding modifying the conditions or terms of this Purchase Order shall be binding upon Purchaser nor will extra compensation be paid by Purchaser unless the agreement or understanding is made in writing. References to Supplier's quotation, bid, or proposal do not imply acceptance of any term, condition, or instruction contained in any such document, and Purchaser hereby rejects any such term, condition or instruction.

Anything that may be called for in the specifications or Statement of Work (SOW) and not shown on the drawings, or shown on the drawings and not called for in the specifications or SOW shall be considered as called for in each. Supplier is charged with knowledge of the specifications, SOW, drawings and documents referenced in Contract. Unless otherwise set forth on the face of the Purchase Order, only NEW materials as specified and of APPROVED origin shall be furnished hereunder unless alternates are approved in writing by Purchaser and/or listed in the order. Materials not in conformity with these requirements are subject to return at Supplier's expense.

This Purchase Order shall be construed and interpreted in accordance with the laws of the State of Tennessee, without regard to its conflicts-of-laws provisions. Notwithstanding the original drafting of documents used herein, preparation of Purchase Order has been a joint effort of Purchaser and Supplier, and the resulting agreement and provisions herein shall not be construed more favorably towards one party than the other for reason of original drafting. Supplier acknowledges that it was given the opportunity to seek the advice of legal counsel concerning all provisions of Purchase Order. No waiver of any right or privilege of Purchaser will occur upon Purchaser's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege or its waiver of any breach.

2. CHANGES/DISPUTES

Purchaser may at any time by written notice to Supplier: (i) make changes in the shipping or packing instructions; (ii) increase or decrease the quantity of products or services ordered; (iii) change the drawings or specifications, and/or (iv) make changes to the SOW, performance, or delivery schedule. If Supplier believes that such changes affect the price or delivery date for such goods or services, Supplier shall so notify Purchaser in writing (with supporting documentation satisfactory to Purchaser) within five (5) calendar days after receipt of Purchaser's written direction to make changes. Supplier will not be entitled to compensation or schedule relief for work which it performs if it fails to first comply with these notice requirements. If a request for adjustment is timely made by Supplier, Purchaser shall either (i) direct Supplier in writing to not perform the change until both parties mutually agree in writing upon the adjustment in the price and/or delivery date, or (ii) direct Supplier in writing to perform such change during the time Supplier and Purchaser mutually agree upon the adjustment in the price and/or delivery or performance date, in which event Supplier shall keep detailed records of extra costs it incurs. No change in the contract price or schedule shall be made except in accordance with a change Order executed in writing by Purchaser's Authorized Representative(s) (as identified on the face of the Purchase Order) and Supplier in accordance with this Article. All change orders shall contain full particulars of the change, and any adjustments of the contract price or schedule and any other modification to this Agreement required by such change. Written directives regarding any change from any person(s) other than Purchaser's Authorized Representative(s), as identified in the Purchase Order, shall not be binding on Purchaser.

Unless otherwise prohibited by this Purchase Order or barred by Purchaser's failure to adhere to terms and conditions of this Purchase Order, all claims, disputes and other matters of controversy which cannot be agreed by negotiation between Purchaser and Supplier, shall be decided by mediation in accordance with the "Mediation Rules of the American Arbitration Association".

3. PRICE

The prices on this order are firm and not subject to escalation unless noted on the face hereof. It is agreed and understood that any and all risks of increase in the price of labor, materials and other items of cost have been contemplated by the Supplier and have been taken into consideration in arriving at the price set forth herein. Pricing terms are as set forth on the face of this Purchase Order. Upon request by Purchaser, releases of liens or affidavits showing that Supplier and Supplier's sub-suppliers, if any, have been paid through any prior invoice may be required as a condition of payment of any invoice. Any backcharges from Purchaser to Supplier shall be paid by Supplier within 30 days of written notice by Purchaser describing the amount and basis of the backcharge.

Further, by submitting an invoice under the Purchase Order, Supplier warrants and represents that (i) all work performed for which payment is requested has been performed in strict compliance with the terms and provisions of the Purchase Order including these terms and conditions, (ii) Supplier has paid each and all of its suppliers, laborers, subcontractors, vendors and materialmen in full for all labor, materials, equipment and/or

services provided to it, and any and all claims, damages, losses, costs and expenses in connection therewith, through any prior submitted invoice, and (iii) Supplier waives and releases any and all rights, claims and causes of action which Supplier may have against Purchaser and/or the Owner of the project, including any and all costs, expenses and damages incurred by Supplier, arising out of or related to all labor, materials, equipment and/or services furnished for incorporation in or use or work on the project through the date of the invoice other than any applicable retainage upon payment of the invoice and any change requests made in accordance with Article 2. Supplier agrees to indemnify Purchaser from any and all loss, cost or expense resulting from any false or incorrect information in connection with the warranties and representations made herein. Supplier acknowledges that Purchaser is relying on Supplier's statements and representations herein in making payment of invoices to Supplier.

4. PAYMENT CONDITIONS

Notwithstanding anything to the contrary herein, payment by Purchaser to Supplier is a condition precedent to Purchaser's right to payment from the Client. All payments to Supplier shall be made only out of payments actually received by Purchaser from the Client. Final payment to Supplier shall be made only out of funds actually received by Purchaser from the Client, and only to the extent the final payment reflects work which has been approved and paid by the Client.

5. TIME OF PERFORMANCE

TIME IS MATERIAL AND IMPORTANT TO THIS PURCHASE ORDER. Any drawings required to be submitted, before manufacture, by Supplier for Purchaser's approval, and any materials to be delivered or submitted by Supplier shall be in strict accordance with the time stated herein. In addition to any other remedies of Purchaser herein, if delivery has not been timely made, or, in the reasonable opinion of Purchaser, cannot be made as promised, Purchaser, upon written notification to Supplier, may require the manufacturer to work on an overtime or premium schedule and further may require the materials to be shipped expeditiously either by special overland transportation and/or air freight from point of manufacture to the project site, all at Supplier's expense. If stated on the face of this Purchase Order, in addition to any other remedies of Purchaser herein, if delivery does not occur on or prior to the scheduled delivery date for such item, Supplier shall pay to Purchaser as liquidated damages and not as a penalty, the Delay Liquidated Damages in the amounts set forth on the face of this Purchase Order.

6. ASSIGNMENT; INDEPENDENT CONTRACTOR; SUBCONTRACTING

Neither this Purchase Order nor any portion hereof shall be assigned or delegated by Supplier without Purchaser's prior written consent and any such assignment or delegation shall be void. Purchaser reserves the right to assign this Purchase Order, including Supplier's Work Product and warranties, to Purchaser's affiliates or to Purchaser's client. Supplier shall operate as an independent contractor and not as an employee or agent of Purchaser or purchaser's client, and shall not subcontract any portion of the work without prior written approval of Purchaser.

Supplier shall, at all times, maintain a list of all of its approved sub-suppliers who are providing or have provided material or work under this Contract and shall provide such list to Purchaser within five days of Purchaser's request. Purchaser shall have the right upon written request, to also receive within five days from Supplier a copy of any sub-supplier equipment specifications, performance data and warranties, as well as a copy of all shop and field performance test reports, and sub-supplier field representative reports with respect to work performed by them. Supplier's agreements with their sub-suppliers and subcontractors shall incorporate the requirements of this Contract to the extent applicable.

7. CONFIDENTIAL INFORMATION

"Confidential Information" shall consist of all drawings, data, designs, inventions, and other technical material and the contents thereof supplied by Purchaser to Supplier, whether written or oral, and whether or not designated as confidential or proprietary. Supplier agrees to retain the information in confidence and not to disclose it to any third party or use such information for any other purpose, except as authorized by Purchaser, and only for the performance of this Purchase Order. Supplier shall require these same agreements on the part of any sub-supplier to whom the information is disclosed. Upon written request at any time or upon completion of Supplier's obligations under this Contract, supplier shall return all confidential information or certify that such has been destroyed. Upon any breach of this confidentiality agreement, Supplier agrees that Purchaser and/or Purchaser's client would be entitled to equitable relief, including but not limited to injunctive relief. Supplier shall obtain Purchaser's prior written approval of the text of any announcement, publication, photograph, or other type of communication concerning this Purchase Order or the project prior to the dissemination or release of same by Supplier.

8. CANCELLATION OR SUSPENSION OF AGREEMENT

Purchaser shall have the right to terminate for its convenience or suspend further performance of all or any separable part of this Purchase Order at any time by written notice to Supplier. On the date of such termination or suspension as stated in the notice, Supplier shall discontinue all work pertaining to this Purchase Order or separable part of this Purchase Order, shall place no additional orders, and shall preserve and protect materials on hand purchased for or committed to this Purchase Order, work in progress, and completed work both in Supplier's and in its sub-suppliers' plants pending Purchaser's instructions, and shall dispose of same in accordance with Purchaser's instructions. Termination payment to Supplier or refund to Purchaser, if any, shall be promptly and mutually agreed to by

Purchaser and Supplier, based on that portion of the work satisfactorily performed to the date of cancellation, including reimbursement for reasonable overhead and profit on such work, plus reasonable and necessary expenses resulting from the termination, as substantiated by documentation satisfactory to and verified by Purchaser, disposition of work and material on hand, and amounts previously paid by Purchaser. Supplier shall be entitled to its reasonable and necessary expenses resulting from such suspension, as substantiated by documentation satisfactory to and verified by Purchaser. Supplier shall not be entitled to any loss of prospective profits, contribution to overhead or incidental, consequential or other damages because of such termination or suspension.

In the event of partial or full termination for default by Supplier, Purchaser may complete the performance of this Contract by such means as Purchaser selects, and Supplier shall be responsible for and shall reimburse Purchaser for any damages and additional costs incurred by Purchaser in so doing. Supplier shall deliver or assign to Purchaser any work in progress as Purchaser may request. Any amounts due to Supplier for goods and services completed by Supplier in full compliance with the terms of this Contract prior to such termination shall be subject to offset of Purchaser's additional costs of completing the Contract and other damages incurred by Purchaser as a result of Supplier's default. Waiver by Purchaser of any default of Supplier shall not be considered to be a waiver by Purchaser of any provision of this Contract or any subsequent default by Supplier.

9. INDEMNIFICATION

THE SUPPLIER AGREES TO ASSUME THE RISK OF AND TO RELEASE, DEFEND, INDEMNIFY AND SAVE HARMLESS PURCHASER, PURCHASER'S CLIENT, THE RELATED ENTITIES OF BOTH, AND DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND ASSIGNS OF EACH ("INDEMNITEES") FROM AND AGAINST ALL LOSS, DAMAGE, LIABILITY, COST AND EXPENSE (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) TO THE EXTENT CAUSED BY SUPPLIER'S NEGLIGENCE OR BREACH OF THIS CONTRACT, INCLUDING BUT NOT LIMITED TO CLAIMS OR LOSSES RESULTING FROM (I) ANY INJURY (INCLUDING DEATH) TO ANY PERSON OR DAMAGE TO ANY PROPERTY RESULTING FROM OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT OR THE GOODS FURNISHED; (II) ANY VIOLATION OF SUPPLIER'S OBLIGATION OF CONFIDENTIALITY; (III) ANY BREACH OF WARRANTY; (IV) ANY FAILURE TO COMPLY WITH LAWS APPLICABLE TO THE WORK AND (V) CLAIMS OR SUITS FOR INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS, OR OTHER INTELLECTUAL PROPERTY RIGHTS RELATED TO ANY ITEM FURNISHED HEREUNDER, THE DESIGN OF WHICH IS FURNISHED BY SUPPLIER. THE INDEMNITY OBLIGATIONS IN THIS CONTRACT SHALL BE MODIFIED AS REQUIRED TO EXCLUDE INDEMNIFICATION WHICH IS EXPRESSLY PROHIBITED BY APPLICABLE STATUTE OR LAW, WITH ALL OTHER OBLIGATIONS OF SUPPLIER UNDER THIS CONTRACT ENFORCED TO THE EXTENT PERMITTED BY LAW.

10. WARRANTY AND GUARANTEE

Supplier represents, warrants and guarantees that all items and components furnished hereunder shall be (a) new, (b) in strict conformity with specifications, (c) free from faulty materials, workmanship, and design (except to the extent the design is furnished by Purchaser) and (d) of proper materials, sizes and capacity to perform satisfactorily under the full range of operating and/or design conditions specified in the Agreement (e) in conformance with any applicable laws, regulations and codes; and (f) conveyed with clear title, free and clear of any and all liens, restrictions, reservations, security interests, and encumbrances. Supplier shall within seven days of notice of defect by Purchaser repair, modify, or replace all items not in conformity with above free of cost to Purchaser or Purchaser's client (and, to the extent of insurance available under Supplier's insurance policies, the work of others that is damaged or destroyed as a result of the defect, correction or replacement). Supplier shall be granted access to the work at a mutually agreeable time to perform cure and shall provide technical assistance, if requested, during any disassembly and reinstallation required to access Supplier's goods. In the event of Supplier's failure to cure as required herein within seven days of notice of defect by Purchaser, Purchaser or its designee may correct or replace such items and charge Supplier all costs thereof. The warranty set forth in this section shall apply during the course of the Contract and for a period of eighteen months from date of shipment or twelve months from first use, whichever date occurs first. With respect to any of Supplier's work that is repaired, replaced, modified, or otherwise altered or corrected, the warranty for such work shall extend for twelve (12) months from the date of completion of such repair, replacement, modification, correction, or alteration. Such warranty, together with all other service warranties of Supplier, shall be transferable by Purchaser to its client and shall be enforceable by Purchaser's client against Supplier.

11. HAZARDOUS MATERIALS

Supplier shall notify Purchaser in writing upon receipt of Purchase Order if goods furnished are subject to laws or regulations relating to hazardous or toxic substances; or when disposed of, to regulations governing hazardous wastes, or to any other environmental or safety and health regulations. Supplier shall ensure that a Material Safety Data Sheet ("MSDS") is delivered to Purchaser for each substance for which an MSDS is required. Supplier shall furnish all appropriate shipping certification, any applicable MSDS and instructions for shipping, safety, handling, exposure, and disposal in a form sufficiently clear for use by Purchaser's nontechnical personnel and sufficiently specific to identify all action which the user must take concerning the material. The following certification must be made on the bill of lading: "This is to certify that the above named articles are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to any applicable transportation regulations."

12. INSPECTION

The goods, including documents and drawings, provided by Supplier under this Purchase Order are subject to inspection, expediting and witnessing of Supplier testing by the Purchaser's representative and/or Purchaser's client, all of whom shall be granted reasonable

access to all parts of the Supplier's plant(s) or Supplier's sub-supplier's plant(s) engaged in the manufacturing or processing of this Purchase Order. Supplier and/or Supplier's sub-supplier will notify Purchaser at least two (2) weeks in advance of the date inspection or test can be made. The representatives' inspection and witnessing of testing or lack of inspection or witnessing of testing or lack of response shall in no way release the Supplier from any obligations related to this Purchase Order or of complying with any and all expressed or implied specifications or of its guarantee that the material shall perform satisfactorily under reasonable service conditions. Supplier is liable for all activities affecting quality or performance of the goods, including sub-supplier activities. Purchaser reserves the right to review Supplier's Quality Assurance and Quality Control Procedures and any other documentation evidencing compliance of Supplier with quality control procedures in its performance of the work.

IF NOTED ON THE FACE OF THIS ORDER THAT INSPECTION IS REQUIRED, NO GOODS SHALL BE SHIPPED BY SUPPLIER ON THIS PURCHASE ORDER WITHOUT EITHER PURCHASER'S FINAL INSPECTION OR A WRITTEN WAIVER OF INSPECTION BY PURCHASER. VIOLATION OF THIS REQUIREMENT SHALL CONSTITUTE A BREACH OF THIS CONTRACT, WITH POSSIBLE REJECTION OF THE GOODS, AND SUBSEQUENT COSTS FOR RETURN OR OTHER ACTION AS WARRANTED AGAINST THE ACCOUNT OF THE SUPPLIER.

13. INSURANCE

12.1 Certification of Insurance: Before any Work is performed under this Purchase Order, written proof of compliance with the requirements of this Article shall be furnished to Purchaser on a certificate furnished by Purchaser with insurers satisfactory to Purchaser and executed by an authorized representative of Supplier's insurer, which certificate shall, to the extent allowed by law, provide for at least thirty (30) days written notice received by Purchaser prior to the cancellation or modification of any insurance referred to therein. Purchaser may also at any time call for and Supplier shall promptly furnish true and exact copies of all policies of insurance affording the coverage required herein and any endorsements or changes thereto.

12.2 Worker's Compensation: Supplier shall maintain Worker's Compensation Insurance as required by law and Employer's Liability Insurance with minimum limit of \$1,000,000 per occurrence.

12.3 Comprehensive General Liability: Supplier shall maintain Comprehensive General Liability Insurance with a combined minimum single limit of \$1,000,000 per occurrence for bodily injury and property damage, protecting Purchaser, its client, the affiliates of each, and their employees, agents, directors, officers, and representatives against bodily injury, including death, and property damage arising out of Supplier's work hereunder. The Comprehensive General Liability Insurance shall include products liability, blanket contractual, completed operations, broad form property damage, and shall expressly cover the contractual liability assumed by Supplier under this Purchase Order. To the extent allowed by law, the policy shall be endorsed to name Purchaser, its client and their affiliates as additional insured parties.

12.4 Automobile Liability: Supplier shall maintain Automobile Liability Insurance with a combined minimum single limit of \$1,000,000 per occurrence for bodily injury and property damage covering use and operation of owned, non-owned and hired vehicles.

12.5 Waiver of Subrogation and Additional Insured: Supplier shall obtain from its insurers for all insurance coverages applicable to the Work and/or required hereunder, a waiver of subrogation in favor of Purchaser, its client, and their agents, employees, officers, and directors. Purchaser, its client, and their affiliates shall be named as an additional insured on Supplier's comprehensive general and excess liability policies for both ongoing and completed operations hazards and such policies shall contain a severability of interest clause.

12.6 Third Party Requirements: Should Supplier subcontract any of the Work to a third party, Supplier shall maintain in full force and effect all of the coverages required by this Article, with Supplier's certificate of insurance expressly referencing such subcontractor to Supplier, and shall require such third party to furnish the same insurance and indemnity in favor of Purchaser and Purchaser's Client as are required of Supplier hereunder and show evidence thereof to Purchaser on a certificate form approved by Purchaser.

12.7 Liability: It shall be Supplier's obligation to verify that all required coverages are in place and failure of Purchaser to verify that coverages are in place shall not be deemed a waiver of Supplier's obligations to provide required coverages. The fact that Supplier has obtained the insurance required in this Purchase Order shall in no manner lessen nor affect Supplier's obligations or liabilities set forth in this Purchase Order.

14. GOVERNMENT CONTRACTS

If it is indicated on the face of the Purchase Order, or the Supplier is otherwise informed in writing that this order is placed directly or indirectly, under a contract with the United States Government or any state or other municipal government authority (The PRIME CONTRACT) then any terms and conditions required by law, regulation or PRIME CONTRACT are incorporated herein by reference. The Terms and Conditions would include but not be limited to, the Scope of Work, technical requirements, QA Program requirements, right of access, documentation requirements, non-conformances, spare/replacement parts, suspect and counterfeit items prevention, and commercial grade items criteria.

15. AUDIT RIGHTS

Supplier shall maintain complete records documenting all of the work performed hereunder to prove compliance with the terms of the Contract, including but not limited to proof of compliance with quality control procedures, proof of compliance with applicable laws, proof of payment of all sub-suppliers and proof of ability to comply with any schedule requirements in the Contract. Additionally, financial records in compliance with GAAP shall be maintained for all work performed on a reimbursable basis (including without limitation

records of the number of hours worked and the cost of any materials furnished by Supplier). All such documentation shall be retained during the term of this Contract and for a period of five years after the termination or completion of this Contract (the "Audit Period"). Purchaser and its agents shall have the right to audit such records and any other documentation pertaining to the work at any time and from time to time during the Audit Period, provided however that the internal composition of any lump sum, fixed rate, proprietary formula, or markup that has been agreed to by Purchaser is not subject to audit except to verify the proper application of such amount to the work. Such audits shall be conducted during normal business hours and Supplier may, acting reasonably, exclude any proprietary trade secrets from such audits. Purchaser shall have the same rights with respect to any sub-supplier, and Supplier shall ensure that any such sub-supplier maintains, retains and makes available for auditing proper records during the Audit Period.

16. MISCELLANEOUS

15.1 Choice of Law: The Contract shall be subject to the law and jurisdiction of the State of Tennessee, without application of principles of conflicts-of-laws; provided however if the Project is located in a State other than the State of Tennessee, this provision is not intended to relieve Subcontractor from compliance with all local and State laws of the situs of the Project. Venue shall be proper only in the courts of Knox County, Tennessee.

15.2 No waiver: Any action by Purchaser with respect to review of Supplier's documents and drawings, inspection of, or payment for the goods and/or services covered by this Contract shall in no way prejudice Purchaser's right to reject nonconforming or defective goods or services, nor be deemed to constitute acceptance by Purchaser of the goods or services, or affect in any way Supplier's obligations under this Contract notwithstanding Purchaser's opportunity to inspect the goods or services, Purchaser's knowledge of the nonconformity or defect, its substantiality, or the ease of its discovery, nor Purchaser's failure to earlier reject the goods or services. No waiver of any right or privilege of either Party will occur upon a Party's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege or its waiver of any breach.

15.3 Survival: Any provisions which by their nature are intended to survive the termination or completion of this Contract shall survive, including but not limited to provisions regarding warranties, indemnities, confidential information, and choice of law.

15.4 Force Majeure: Either party to this order shall be free from liability for failing to timely perform hereunder if such failure is due to any event beyond the reasonable control of the affected party, provided that such event could not have been prevented or avoided by the exercise of due care or foresight, and provided such event is not caused in whole or part through the negligence or misconduct of the party seeking relief. In the event that Supplier is unable to perform as described above, Supplier must notify Purchaser in writing within five (5) calendar days of the occurrence producing the force majeure delay or forfeit its right to additional time of performance under this paragraph. The notice must contain reasons for the delay and an estimate of the delay in shipment of the goods. After receipt of such notice, Purchaser shall have the right either to grant Supplier additional time to perform, as determined by Purchaser, or terminate the order. Force Majeure shall not include: (i) labor relations disputes or problems; (ii) changes in the market or the economy; (iii) financial hardship or insolvency; (iv) changes in applicable law; (v) transportation or supply chain delays. In no event shall Supplier be entitled to the payment of additional monies as a result of the occurrence of any event of force majeure.

15.5 License: Supplier hereby grants to Purchaser and Purchaser's Client an irrevocable, royalty-free, nonexclusive license under all patents and intellectual property rights to the equipment and work product provided hereunder to the extent necessary for the operation, maintenance, or repair of equipment and/or materials supplied by Supplier under this Purchase Order.