

PROFESSIONAL SERVICES PURCHASE ORDER TERMS & CONDITIONS

Whereas, Purchaser wishes to contract with Seller for the services described in the Purchase Order (hereinafter called "Services").

Whereas, Seller is ready, willing, and able to provide such Services as may be required by Purchaser.

Now, therefore, for and in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES

Subject to the terms and conditions set forth herein, Seller shall provide the Purchaser with professional services as specified in the associated Purchase Order in the Services Description section as well as any services stated in the corresponding proposal or quote (if any) provided to Purchaser. Any terms and conditions stated in any communication proposal, quote, estimate or other correspondence from Seller to Purchaser are rejected. Any additional terms and conditions other than what is contained herein contained in any Purchase Order acknowledgement provided by Seller after this Purchase Order is issued are hereby rejected.

ARTICLE 2. PAYMENT

Payment from Owner is a specific condition precedent to Purchaser's obligation to pay Seller for services performed and materials or equipment provided pursuant to this Agreement. Upon payment from Owner for the portion of work that corresponds with Seller's supplied services, and receipt of a valid invoice from Seller, payment shall be made net sixty (60) days from the date of receipt by Purchaser of Seller's invoice. Seller's invoice shall set forth, as a minimum, details of labor expended:

Seller's invoice shall set forth the date or dates Seller provided Services under and pursuant to this Agreement as well as what Services were provided on what date. Beginning and ending dates shall be shown whenever Services are provided uninterrupted over a period of time and individual dates shall be shown whenever Services have been provided on a day-to-day basis. Seller's invoice shall clearly show the labor classification, name(s) of Seller-provided personnel, applicable labor rate(s), and the total dollars claimed for the period. Whenever Seller provides Services for an extended period of

time, Seller shall submit its invoices for Services provided no less often than once each calendar month.

ARTICLE 3. PERSONNEL

Seller agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services pursuant to this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement.

Seller further represents and warrants that all Seller assigned personnel have been properly trained and received all certifications required in both their respective work functions under this Agreement as well as in all applicable safety rules, ordinances, regulations (municipal, state and federal) and that every Seller-provided worker has passed a background check and if applicable a drug screen and/or medical evaluation in regards to their fitness to complete all tasks required under this Agreement.

ARTICLE 4. DURATION AND TERMINATION

This Agreement may be terminated by:

- I. Purchaser, immediately and at any time and for any reason, with or without cause. In the event of termination by the Purchaser, Seller will be paid for Services rendered up to the date and time termination is communicated to the Seller.
- II. Seller, with or without cause at any time, upon sixty (60) days' prior written notice to Purchaser.

ARTICLE 5. INDEMNIFICATION

To the maximum extent permitted by law, Seller shall indemnify and hold harmless Purchaser, any higher tier contractor, and the Owner, jointly and severally, and their respective officers, consultants, sureties, agents and employees of any of them (Indemnified Parties) from and against any and all, claims, losses, costs, damages, and associated reasonable expenses, including but not limited to attorneys' and consultants' fees, caused by or arising out of the performance of the Work by Seller or by any of its, subcontractors, officers, agents, employees or servants, including but not limited to any claims for bodily injury, sickness, disease, or death or to injury to or destruction of or loss of use of real or personal property, claims due to delays in or acceleration of the work of other contractors, claims for loss

of productivity, claims for additional storage and handling charges, claims for escalation of the cost of labor and materials, claims for home office overhead, liens against funds, claims related to the alleged failure of the Seller to perform in accordance with this Agreement, and/or claims related to the removal, handling or use of any hazardous materials. The indemnity shall not apply to claims, liability, litigation, loss or expense caused by the sole negligence of Purchaser.

ARTICLE 6. INDEMNIFICATION CONTRACTOR

The status of Seller is that of an independent contractor and not of an agent or employee of Purchaser and, as such, Seller shall not have the right or power to enter into any contracts, agreements, or any other commitments on behalf of Purchaser.

ARTICLE 7. INSURANCE

Seller shall maintain in full force and effect, and upon the request of Purchaser, shall furnish evidence satisfactory to Purchaser that Seller maintains the following insurance coverages:

- I. Comprehensive general liability insurance in the minimum amount of \$5,000,000.00 combined single limit that will cover any and all losses to Purchaser property, property of third parties, or personal injuries caused by the acts or omissions of Seller.
- II. For any vehicle used by Seller or Seller-supplied workers in providing Services under and pursuant to this Agreement, vehicle liability insurance in the minimum amount of \$1,000,000.00 combined single limit.
- III. Seller will carry workers' compensation and employer's liability insurance in accordance with applicable law.
- IV. Errors and Omissions Liability coverage shall not be less than \$5,000,000.00 per year covering Seller's obligations under the contract with a per claim deductible less than \$50,000.00

None of the above insurance coverage shall be cancelable except upon thirty (30) days prior written notice to the Purchaser and to all other insured parties, and Seller shall provide to Purchaser a copy of any such cancellation notice immediately after Seller's receipt of it. If Seller is subject to any no fault insurance requirements, it shall adhere to all applicable laws and regulations pertaining to such no fault insurance. Seller shall not start to perform under the Contract until all required insurance has been obtained and, if requested by Purchaser, certificates confirming such coverage and any excess liability or umbrella coverage have been furnished to Purchaser.

At a minimum, the language to be included within the Certificate of Insurance is as follows:

Tourgee & Associates, Inc., TAI Specialty Construction Inc. and [Insert Owner's Name] are all named as Additional Insured. Waiver of Subrogation in favor of Tourgee & Associates, Inc., TAI Specialty Construction, Inc. and [Insert Owner's Name]. Primary/Non-Contributory endorsement is included for all additional insureds.

ARTICLE 8. ASSIGNMENT

Neither the Purchaser nor the Seller may delegate, assign, sublet, or transfer its duties or interest in this agreement without the written consent of the other party.

ARTICLE 9. ENTIRE AGREEMENT

The Purchaser Order and these Terms and Conditions together shall constitute the entire Agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement. Neither shall any additional terms and conditions contained in an invoice or purchase order acknowledgement be binding unless signed by Purchaser and return to Seller via USPS with a return receipt requested.

ARTICLE 10. GOVERNING LAW

This Agreement is to be governed by the laws of the State of Maryland, exclusive of its conflicts of laws provisions. If a claim arises in relation to this Agreement and the claim is for \$30,000 or less, then the claim shall be tried solely and exclusively in a district court of Maryland for Carroll County. If the claim is for more than \$30,000, then the claim shall be settled by binding arbitration before one arbitrator in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Such arbitration shall be in Owings Mills, Maryland, at a location agreed upon by both Parties. Any award rendered by the arbitrator(s) shall be conclusive and binding upon the parties. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with the applicable law in any court of competent jurisdiction. Due to the specialized nature of construction litigation, EACH PARTY HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO A TRIAL BY JURY. Client hereby consents to personal jurisdiction and venue in the State of Maryland.

ARTICLE 11. MODIFICATION OF AGREEMENT

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party. The only authorized representatives for the purchaser to modify this agreement is its General Counsel, or a Principal (Owner) of the Purchaser.

ARTICLE 12. NO WAIVER

The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

ARTICLE 13. STANDARD OF PERFORMANCE

Seller shall perform all services required pursuant to this Agreement to the highest degree of skill, care and diligence of a practitioner of the profession in which Seller is engaged. All products and services of any nature which Seller provides to Purchaser pursuant to this Agreement shall conform to the highest standards of quality observed by licensed, competent professionals practicing in Seller's profession.

ARTICLE 14. LICENSES, PERMITS, ETC.

Seller represents and warrants to Purchaser that it has all professional licenses, business licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Seller to practice its profession. Seller represents and warrants to Purchaser that it shall at its sole costs and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Seller to practice its profession.

ARTICLE 15. TIME FOR PERFORMANCE

Seller shall devote such time to the performance of the services required by this Agreement as may be reasonably necessary for the satisfactory performance of its obligations pursuant to this Agreement. Neither party shall be considered in default for this Agreement to the extent performances are prevented or delayed by any cause, present or future, which is beyond the reasonable control of the parties set forth in this Agreement.

ARTICLE 16. SELLER NOT AGENT

Seller shall have no authority, express or implied to act on behalf of Purchaser in any capacity whatsoever as an agent. Seller shall have no authority, express or implied

pursuant to this Agreement, to bind Purchaser to any obligation whatsoever.

ARTICLE 17. PRODUCTS OF SERVICES

All information developed pursuant to this Agreement, and all work sheets, reports and other work products, whether complete or incomplete, of Seller resulting from services rendered pursuant to this Agreement, shall become the property of Purchaser. Seller does not assume any liability which may arise from the use of its work products created under this Agreement for other than their intended purpose.

ARTICLE 18. ASSIGNMENT & SUBCONTRACTING PROHIBITED

No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect. Seller shall not subcontract any services to be performed under this Agreement without the prior written consent of Purchaser.

ARTICLE 19. NOTICES

All notices pursuant to this Agreement shall be in writing and mailed, postage prepaid, first class mail with a return receipt requested or personally delivered to the Purchaser and Seller stated in the attached Purchase Order.

ARTICLE 20. INTEGRATION CLAUSE

The Agreement constitutes the entire agreement of the parties and may not be amended, except in writing signed by both parties.

ARTICLE 21. SEVERABILITY CLAUSE

Should any provision of this Agreement ever be deemed to be legally void or unenforceable, all remaining provisions shall survive and be enforceable.

ARTICLE 22. WAIVER

Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

ARTICLE 23. CONFIDENTIALITY OF PURCHASER & OWNER INFORMATION

During performance of this Agreement, Seller may gain access to and use Purchaser or Owner's information regarding, but not limited to, the project including procedures, policies, training, operational practices, and other vital information ("Project Information") which are valuable, special and unique assets of the Purchaser and

Owner. Seller agrees to protect all Project Information and treat it as strictly confidential, and further agrees Seller will not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any Project Information to any third party without the prior written consent of Purchaser or Owner. A violation by Seller of this paragraph shall be a material violation of this Agreement and will justify legal and or equitable relief.

ARTICLE 24. AUTHORITY

The person signing the Purchase Order for Seller which combined with these Terms and Conditions constitute the binding Agreement between Purchaser and Seller hereby represents and warrants that he/she is fully authorized to sign the Purchase Order and bind the Seller to this Agreement.

ARTICLE 25. CONFLICT OF TERMS

Except as otherwise provided in this Agreement or any of the other incorporated documents by specific reference to the applicable provisions of this Agreement, if any provision contained in these Terms and Conditions conflicts with any provision in any of the other documents, the provision contained in these Terms and Conditions shall govern and control.

ARTICLE 26. SAFETY STATISTICS

Seller warrants that for each of the past three years:

- I. it has not had a fatality;
- II. Its Total Recordable Incident Rate (TRIR) has not exceeded 1.0, and
- III. its Experience Modification Rate (EMR) has not exceeded 1.0.