

STEEL & FABRICATION PURCHASE ORDER TERMS & CONDITIONS

PURCHASER DOES NOT ACCEPT ANY TERMS AND CONDITIONS OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN AND ATTACHED TO THIS PURCHASE ORDER, AND PURCHASER SHALL PURCHASE THE MATERIALS AND SERVICES ONLY UPON THE TERMS AND CONDITIONS ATTACHED HERETO. NO OTHER TERMS AND CONDITIONS THAT MAY OTHERWISE BE CONTAINED IN ANY DOCUMENTS OF SELLER (INCLUDING BUT NOT LIMITED TO PURCHASE ORDER ACKNOWLEDGEMENTS, QUOTES, ESTIMATES, PROPOSALS, ETC.) SHALL MODIFY OR CONTRADICT THE TERMS SET FORTH HEREIN.

ARTICLE 1. SALES AND SERVICES AGREEMENT

Seller hereby agrees to provide to Purchaser, and Purchaser hereby agrees to purchase from Seller, the Materials and/or Services identified in one or more purchase orders, releases or work orders issued by Purchaser to Seller ("Purchase Order"). These terms and conditions govern all purchases of Materials and/or Services, and will expressly indicate if and to what extent any provision hereof is limited to either the purchase of Materials or supply of Services. Otherwise, each provision hereof shall be construed as broadly as possible to govern the supply of both Materials and Services.

ARTICLE 2. PURCHASE PROCEDURE

All purchases shall be made only upon the terms and conditions set forth herein. If Seller accepts Purchaser's Purchase Order in writing or commences with the supply of any of the Materials or Services that are the subject of any Purchase Order, Seller shall be deemed to have accepted these terms and conditions in their entirety without modification. The Purchase Order number must appear on all labels, invoices and other documentation relating to the order/release, as applicable.

ARTICLE 3. PRICE/PAYMENT TERMS

Payment from the Owner is a specific condition precedent to Purchaser's obligation to pay Seller for work performed and materials supplied pursuant to this Agreement. Upon payment by the Owner the Purchaser shall pay the Seller for the satisfactory completion of its obligations hereunder the amount or amounts stated in the Purchase Order Agreement, subject to additions and/or deductions for changes in the work as may be agreed upon in writing pursuant to written, signed change orders. Prices for all Materials and Services purchased by Purchaser hereunder shall be as set forth in Purchaser's Purchase Order. No extra charges of any kind will be allowed

unless prior written consent thereto is specifically provided by the Purchaser.

It shall be Seller's obligation to pay from the gross amount paid to it by Purchaser all taxes imposed by federal, state, or municipal governments, including all state and federal FICA and FUTA taxes, which shall become due or payable arising out of the employment by the Seller of all employees in the performance of work under this Agreement. As a condition precedent to the receipt of the final payment and/or retained percentage, if any, by the Seller, the Seller shall show evidence to the Purchaser that all payments for such taxes have been made.

The Purchaser shall compensate the Seller in installments as follows. Payments shall be made monthly for the proportion of the contract sum mentioned above properly allocable to the work completed and materials provided through the last day of the preceding month, as determined by the Purchaser, less the percent retained by the Owner and less the aggregate of previous payments, within seven days after the receipt of said payment by the Purchaser from the Owner, provided all other provisions of this Agreement are being fulfilled by the Seller. The Seller shall be paid no more than the Purchaser is paid by the Owner for that particular division of work or materials provided by the Seller. Payments hereunder shall be subject to the following conditions precedent:

- A. The Seller having furnished, at the request of the Purchaser, all forms of affidavits, certificates, and such other data as may be required by the Purchaser in order to fully comply with the requirements of the Owner;
- B. The Seller having executed and delivered, upon demand, evidence, including general releases and affidavits, lien waivers and/or waiver of claims, satisfactory to the Purchaser that no unpaid claims exist against the Seller for labor, materials, insurance, sales tax, or other obligations incurred by the Seller in the performance of the work and materials provided hereunder. Such evidence shall be provided upon request during the course of the performance of the work, and in any event, shall be provided prior to the release of final payment and/or retention; and
- C. Purchaser having received payment from the Owner for the work and materials for which payment is sought.

Any retainage specified will be paid to the Seller within sixty days after acceptance of the Seller's materials and work by the Owner, Architect, Engineer, and Purchaser unless otherwise provided in the (contract between the Purchaser and its Client or the Owner of the project for which materials, services or equipment are being purchased, henceforth, "Prime Contract"). The Purchaser may withhold such payments, as it may deem necessary to guarantee the satisfactory performance of or compliance with any provisions of this Agreement. No payment shall be construed to be an acceptance of any work or materials provided nor shall payment prejudice any of the rights granted to the Purchaser for this Agreement. All payments shall be subject to adjustment and/or correction in the final payment.

All work for which payment has been made shall become the property of Purchaser, or, if the Prime Contract so provides, the property of the Owner. However, this provision shall not relieve the Seller from the sole responsibility and liability for all of the work and materials provided upon which payments have been made, until final acceptance of such Work by the Owner.

Purchaser may withhold all amounts otherwise due under this Agreement or any other agreement between the parties, including back charges, to cover Purchaser's reasonable estimate of any costs or liability Purchaser has incurred or may incur, for which Seller may be responsible under this Agreement or any other agreements between the parties, to the extent allowed by applicable state or local law. Appropriate adjustments to withholdings shall be made when the exact amounts owed hereunder are determined.

Notwithstanding any provision of this Agreement to the contrary, and subject to withholdings permitted by this Agreement, Purchaser shall make final payment to the Seller only after:

1. all of the work hereunder has been completed and approved by the Owner;
2. the Seller has provided proof that is satisfactory to Purchaser that the Seller has paid all amounts it owes in connection with this Agreement;
3. the entire Project under the Prime Contract has been completed;
4. all final payment prerequisites under the Prime Contract have been satisfied;

5. the Seller has provided a final release of mechanics liens and certification that all laborers, second tier subcontractors and suppliers have been paid in full with respect to the work under this subcontract; and

6. Purchaser has been paid in full for the entire project under the Prime Contract.

Effective immediately upon final payment to the Seller, the Seller hereby waives any and all claims against Purchaser, unless previously reduced to writing and identified as unsettled.

The Seller shall cooperate fully with Purchaser in securing payment to Purchaser by the Owner, including but not limited to providing such supporting documentation as the Owner or Purchaser may require.

It is specifically understood and agreed by the Seller and Purchaser that all payments from Purchaser to the Seller under this Agreement are dependent, as an express condition precedent, upon Purchaser receiving contract payments, including retainage, from the Owner. At any time in which all monies due to Purchaser from the Owner are not paid, Purchaser shall, at its sole discretion, apportion the nonpayment equitably and reduce the payments otherwise due to Seller in direct proportion to the amount due to Purchaser from Owner. Such reductions shall continue until Purchaser is paid all monies due to Purchaser.

ARTICLE 4. SHIPMENTS OF MATERIALS

All Materials purchased hereunder shall be delivered to the Ship to Location address FOB per the Incoterms 2020, unless otherwise agreed by the parties.

ARTICLE 5. UNITS OF MEASURE FOR MATERIALS

Material shall be supplied in the units of measure specified in Purchaser's Purchase Order and Seller's documentation and data shall also refer to such units of measure, unless otherwise agreed to by Purchaser.

ARTICLE 6. DELIVERY OF MATERIALS AND SERVICES

Seller shall make delivery of Materials in accordance with Purchaser's delivery schedule and shall perform the Services within the time frame Purchaser specified, or as otherwise mutually agreed by the parties. Time is of the essence. Seller shall promptly notify Purchaser whenever it appears to Seller that Seller will not be able to deliver any part of the Materials specified or to perform any part of the Services on the date(s) specified. Purchaser, in addition to any other remedies available to it, may terminate the Purchase Order without any further liability. In such case, Seller shall, at Seller's expense, take all reasonable steps, including working extra hours or

using alternate shipping methods to expedite delivery of any and all such Materials or the performance of such Services. Seller shall also be fully responsible for expediting sub-Sellers and/or subcontractors. Seller shall provide Purchaser periodic verified sub-Seller delivery information and/or subcontractor completion information, or authorize Purchaser to contact any sub-Seller and/or subcontractor directly for same. If Purchaser accepts short shipments or late deliveries of Materials, and/or if Purchaser permits Seller to provide Services hereunder after the specified date, such acceptance or permission shall not constitute a waiver of any of Purchaser's rights.

ARTICLE 7. DELIVERY/PACKAGING PROCEDURE

Seller and Purchaser shall agree upon required delivery procedures for Materials purchased hereunder. Seller shall use its own trucks, contract carriers and/or common carriers as agreed to by Purchaser. Drivers and other delivery personnel are required to abide by Owner's safety regulations, confidentiality obligations and rules of conduct while on Owner's property, in addition to all rules and regulations imposed by law. Seller shall be responsible for proper packaging of all Materials to be delivered to Purchaser. All Material packaging (if any), loose pieces of material and packing lists shall be identified by Purchaser's Purchase Order/number, and Purchaser's Purchase Order Line Item Number as well as Seller's and/or Manufacturer's Part Number. Seller agrees to include Purchaser's item description on all packing slips.

ARTICLE 8. RETURNS/EXCESS QUANTITIES

Purchaser may, at its discretion, return any Materials if they do not meet the specifications agreed upon between Purchaser and Seller, within thirty (30) days of receipt by Purchaser. Seller shall correct the non-complying materials or services and or refund Purchaser for the purchase price of such returned Material if it does not correct any issues within a reasonable period. The Purchaser shall not be liable for payment for Materials delivered to Purchaser that are in excess of quantities specified on any Purchase Orders. The Seller agrees to accept for return, at its expense including transportation charges, excess Materials delivered to Purchaser. If Seller refuses the return thereof, the excess Materials shall be deemed abandoned by Seller and Purchaser may dispose of the same without further liability to Seller.

ARTICLE 9. SUBCONTRACTORS LIST

Seller's use of any subcontractors shall be subject to Purchaser's prior written approval, which may be given or withheld for any reason whatsoever. Seller shall provide a list of the subcontractors (including appropriate contact information) to be used to perform any Services hereunder.

ARTICLE 10. CERTIFICATES OF ANALYSIS (COA) FOR MATERIAL DELIVERIES

Seller will provide Purchaser's delivery location with a COA prior to or, with each material shipment. A separate COA must be provided for each manufacturing lot.

ARTICLE 11. TITLE TO DRAWINGS AND SPECIFICATIONS

Purchaser shall at all times have title to all drawings, specifications and other documents supplied or prepared by Purchaser and/or by Seller in connection with the furnishing of Materials or Services hereunder, further provided that:

- A. any work of authorship, including any engineering drawings, produced by Seller in its performance under this Agreement (a "Work") shall, to the extent such Work embodies a work of authorship within the definition of a "work made for hire" under 17 U.S.C. §101, be considered a work made for hire hereunder and all right, title, and interest in and to such Work shall immediately vest in Purchaser upon creation of such Work, and
- B. Seller hereby irrevocably agrees to assign and hereby assigns to Purchaser without further consideration, all right, title, and interest in and to any Work which is not considered a work made for hire within the meaning of clause (A) of this section. Seller shall hold in confidence and use the same only to the extent necessary in connection with the supply of Materials or Services to Purchaser and shall, upon Purchaser's request, promptly turn over to Purchaser all copies of same.

ARTICLE 12. WARRANTY, SPECIFICATIONS AND CHANGE

Seller hereby represents and warrants:

- a) that it is legally authorized to sell and deliver the Materials and to perform the Services;
- b) the Materials are merchantable and fit for the purpose contemplated by Purchaser;
- c) the Materials are new and conform to all specifications, including performance specifications, required by Purchaser or stated by Seller;
- d) the Materials will be free from defective materials and workmanship;
- e) the use or sale of the Materials will not infringe any third-party patent or other intellectual property right provided, that Seller does not warrant against infringement by reason of the use of the Materials in combination with other materials or in the operation of any process, except to the extent such use or operation is under the instruction of Seller or provided furthermore that such infringement would not have occurred but for the use of the Materials in combination with other materials or in the operation of any process;

- f) the Materials will be produced, sold and delivered in compliance with all applicable local, state and Federal laws, rules and regulations, and
- g) that the Services provided will be performed in a good and workmanlike manner and in accordance with the best standards of practice, so that such finished Services will be complete, free from faults and defects and in conformity with the following (collectively, the "Standards"):
 - i. all accepted standards and practices customarily provided by an experienced and professional organization rendering the same or similar Services;
 - ii. any guaranty, specifications or standards provided to Seller by Purchaser; and
 - iii. all applicable laws and regulations.

In the event that Purchaser discovers that any of the Standards have not been met and the same is reported to Seller by Purchaser, in writing, following the completion or termination of the Services, or any single project if the Services are provided on a continual basis, Seller shall take such action, at its cost, as is necessary to meet the Standards and shall bear the expenses of making good the work of all other contractors destroyed or damaged by such defect or correction by Seller. The foregoing warranties of workmanship shall not apply when the failure to meet the Standards is due to ordinary wear and tear.

Seller, at its expense, will promptly correct any Materials and workmanship that do not comply with the requirements hereof and shall promptly repair or remove and replace any Materials or equipment not meeting specifications, whether incorporated in the work or not and shall bear the responsibility for correcting all surrounding work, equipment or materials including labor costs.

ARTICLE 13. INSPECTION

Prior to shipment of any Material to Purchaser, Purchaser or its authorized representative may inspect and test any materials, and equipment used during the course of the manufacture or fabrication by Seller and its sub-Sellers of any Materials to be sold hereunder. In addition, Purchaser or its authorized representative may inspect any work provided by Seller or its sub-Sellers in the performance of Services hereunder. Such inspections shall not in any event constitute acceptance by Purchaser of such Materials or Services, or waiver by Purchaser of any of its legal or contractual rights or remedies. Materials purchased or Services provided hereunder are subject to inspection and approval at Purchaser's destination per this section. Purchaser reserves the right to reject and refuse acceptance of Materials or Services not in conformance with any instructions, specifications, drawings and data or Seller's warranties

(express or implied). Payment for any Materials or Services shall not be deemed acceptance thereof and is without prejudice to any and all claims Purchaser may have against Seller.

ARTICLE 14. TERMINATION FOR CONVENIENCE

Purchaser may, at any time, terminate any Purchase Order in whole or in part by written notice. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any of its Sellers and subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the Purchase Order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination or for any costs incurred by Seller's Sellers or subcontractors which Seller could reasonably have avoided.

ARTICLE 15. DEFAULT/TERMINATION

The following shall constitute a default hereunder:

- A. the failure of either party to perform any of its obligations hereunder, which failure is not cured by the defaulting party within ten (10) days following a written notice to do so ("the Cure Period");
- B. the filing by either party of voluntary petition or answer seeking any arrangement, composition, liquidation, or similar relief under any law or regulation relating to bankruptcy, insolvency or other relief for debtors;
- C. the adjudication of either party as a bankrupt or insolvent;
- D. the making by either party of a general assignment for the benefit of creditor;
- E. the admission by either party of its inability to pay its debts generally as they become due; or
- F. the filing of a petition against a party seeking any arrangement, composition liquidation or similar relief under any law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such petition is not dismissed or discharged within sixty (60) days of filing.

Upon the occurrence of a default hereunder and failure to cure during the Cure Period, the non-defaulting party may immediately terminate any Purchase Order by providing written notice thereof to the defaulting party. Such remedy of termination shall be in addition and without prejudice to any other rights or remedies, at law or in equity, which the non-defaulting party may otherwise have.

ARTICLE 16. SAFETY & ENVIRONMENTAL REQUIREMENTS

Seller shall ensure compliance by its employees, subcontractors and agents with all applicable federal, state and local statutes, rules and regulations, including but not limited to those relating to health, safety, labor and environmental matters, as well as Owner's site policies, in the performance of its obligations hereunder.

Seller shall not supply any chemical substance, Materials or product not specifically included in the relevant safety data sheet or any similar material document provided to Purchaser, unless otherwise agreed upon in writing by Purchaser.

Seller agrees that its employees, agents and contractors will handle the Materials in a safe and appropriate manner. Seller will adequately train all of its employees, agents and contractors with respect to the use and handling of the Materials.

Seller warrants that for each of the past three years: (1) it has not had a fatality; (2) its Total Recordable Incident Rate (TRIR) has not exceeded 1.0, and (3) its Experience Modification Rate (EMR) has not exceeded 1.0.

ARTICLE 17. ON SITE

At all times that Seller is at any Owner's facility and in addition to Seller's own safety requirements, Seller acknowledges and agrees to comply with Owner's safety requirements and shall ensure that all of Seller's employees, subcontractors and agents doing work on the site are familiar with Purchaser's rules and requirements at any such facility and comply with them.

In addition to the safety and health provisions contained in Purchaser's policies and safety requirements, Seller while performing the Services hereunder, shall abide by any and all of Seller's, as well as OSHA's, safety and health rules and shall provide Purchaser with a copy of all accident reports prepared by or submitted to Seller, including but not limited to all OSHA illness and injury reports. Seller hereby acknowledges and agrees that it and any of its subcontractors have read such rules and will abide by them. All Services performed hereunder shall fully comply with all applicable governmental safety and health requirements, including but not limited to the rules and standards established by the Occupational Safety and Health Act of 1970, as amended, and any other applicable federal, state and/or local safety or health laws, rules or regulations. Any equipment provided by Purchaser to Seller for the benefit of Seller's employees or those of its subcontractors shall be provided on an "as is" basis with no warranty of performance and at the sole risk and liability of Seller to ensure that such equipment is fit for the use intended and in proper working

order. Seller has a duty to inspect the equipment prior to use, and agrees to defend, indemnify, and hold harmless Purchaser from any and all claims, losses or expenses (including reasonable attorneys' fees) of Seller, its subcontractors, and all of their respective employees arising out of the use of any equipment furnished by Purchaser or advice given by Purchaser relating to such equipment to the fullest extent allowed by law.

Seller shall maintain a drug and alcohol-free work force at all times while on Owner's premises. Seller represents and warrants that all of Seller's employees and subcontractors performing Services at Purchaser's site shall have successfully passed an eleven (11) panel drug screen, as permitted by law, and a background check including a seven (7) year criminal history search. The results of the background check shall be made available to Purchaser's Human Resources representative upon request. A valid TWIC card and additional background check requirements may be requested for any sites specified by Purchaser.

Seller acknowledges that it has examined and is familiar with the premises upon which the Services are to be performed and Materials to be delivered and knows the location, the areas that will be assigned to it for its use, the configuration of the ground, the difficulties and potential hazards attending the execution of Services and delivery of Materials, the general and local labor conditions and all other matters which can in any way affect the execution or safety of the Services.

Seller shall perform the Services and supply the Materials in such a manner as to cause a minimum of interference with Owner's operations and the operations of other contractors on Owner's premises. Upon completion of Services and provisions of Material, Seller shall restore the premises to its original condition and leave said premises clean and free of all tools, equipment, waste materials, and rubbish.

ARTICLE 18. INSURANCE

Seller and its agents, officers, directors and employees, hereby waive all rights of recovery and rights of subrogation against Purchaser, Owner, its agents, officers, directors and employees. All policies identified below shall include a waiver of subrogation clause in favor of the additional insureds herein and state that the Seller's insurance is primary and non-contributory. 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 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.

The liability coverage furnished by Seller shall name the Purchaser, Owner and all of their affiliates as additional insureds, per ISO form CG 2010 11/85, or its equivalent. All insurance coverage shall be in a form acceptable to Purchaser. Upon request, Seller shall provide to Purchaser certified copies of any insurance policy required under this Agreement. The Seller shall require of the Seller's lower-tier subcontractors, agents, and employees by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated in this Section. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Furthermore, the Seller shall maintain, at its own expense, the following insurance, with coverage of at least the amounts set forth below, during performance of the work and for a period of three (3) years after final acceptance of the Project under the General Contract.

- (i) Commercial General Liability - Combined Single Limit - \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Such insurance shall be broad form and include, but not be limited to, contractual liability, independent contractors' liability, products and completed operations liability, premises and operations liability, and personal injury liability.
- (ii) Workers Compensation – Statutory Limits.
- (iii) Employers Liability – With minimum liability limits of \$1,000,000 bodily injury by accident each accident, \$1,000,000 bodily injury by disease, \$1,000,000 bodily injury each employee.
- (iv) Commercial Automobile Liability Combined Single Limit - \$1,000,000 per accident. Such insurance shall cover injury (or death) and property damage arising out of the ownership, maintenance, or use of any private passenger or commercial vehicles and of any other equipment required to be licensed for road use.
- (v) Property Insurance - All risk, replacement cost property insurance to protect against loss of owned or rented equipment and tools brought onto and/or used on any property by the Subcontractor.

- (vi) Umbrella Liability – The Seller shall maintain and provide evidence of umbrella (excess) liability insurance with a minimum limit of Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate. This coverage shall be in excess of and follow the form of the underlying general liability, employer's liability, and commercial auto liability policies.

Builder's Risk / Installation Floater – covering the property and equipment of the Subcontractor being installed, transported or while in temporary storage at the jobsite or at any other location.

ARTICLE 19. REMEDIES; GENERAL INDEMNITY

The Seller hereby assumes the entire responsibility and liability for all of the work and materials provided hereunder, including but not limited to supervision, labor, and materials provided in connection with the work until said items are accepted by Purchaser. The Seller is liable for any loss, damage, or destruction of the work or materials hereunder from any cause, prior to acceptance of said items by Purchaser, and it shall repair, replace, rebuild, and make good such loss, damage, or destruction at its own cost and at no cost to Purchaser.

The Seller shall be liable to Purchaser for all costs Purchaser incurs as a result of the Seller's failure to perform any of its obligations under this Agreement in accordance with its terms. The Seller's failure to perform shall include, but is not limited to, the failure of its lower-tier subcontractors to perform any portion of the work hereunder. The Seller's liability shall include, but not be limited to:

- i. Damages and other delay costs payable by Purchaser to Owner;
- ii. Purchaser's increased costs of performance, such as extended overhead and increased performance costs resulting from Seller-caused delays or improper performance of the work hereunder;
- iii. Warranty and rework costs;
- iv. Liability to third parties;
- v. Excess re-procurement costs;
- vi. Consultants' fees; and
- vii. Attorneys' fees and related costs

To the fullest extent permitted by law, the Seller shall indemnify and defend the Owner, the Architect or Engineer, and the Purchaser and all of their officers, directors, agents and employees and hold them harmless from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the

performance of the Seller's work and the delivery of materials under this Agreement, to the extent caused in whole or in part by any act or omission of the Seller or anyone directly or indirectly employed by the Seller or any one for whose acts the Seller may be liable, regardless of whether it is caused in part by a party indemnified hereunder. Amongst other things, this indemnification shall constitute a waiver by the Seller of any immunity from claims, contributions, or indemnification granted by law to the Seller under applicable workers' compensation laws. The Seller further agrees to indemnify and defend the Purchaser against and hold it harmless from any and all claims, losses, damages, and expenses (including attorney's fees) which the Purchaser may pay or be compelled to pay in settlement of any claims hereunder, including without limitation, claims under the provisions of any worker's compensation laws, claims under the mechanic's lien laws, and claims of third parties.

In the event that the Seller or any of its agents, employee, suppliers, or lower tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts, or similar items belonging to or under the control of Purchaser, the Seller shall be liable to Purchaser for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be found to have been due solely to the negligence of Purchaser's employees operating Purchaser-owned or Purchaser-leased equipment. Seller shall defend, indemnify and hold Purchaser, its employees and agents harmless against any loss or damage, whether personal injury, death or property damage, which may arise from the Seller's use of any of the foregoing.

The Seller's assumption of liability under this Agreement is independent from, and is not limited in any manner by, the Seller's insurance coverage. The Seller shall pay all amounts it owes to Purchaser as a result of the liability provisions of this Agreement upon demand.

Seller's liability for Contractor costs under this Section or under any other provision of this Agreement shall include a ten percent (10%) markup. This markup is not a penalty but is established as liquidated damages to compensate Purchaser for its administrative costs and to allow Purchaser reasonable profit on work which Purchaser must perform as a result of the Seller's failure to properly perform.

ARTICLE 20. CONFIDENTIALITY/LICENSING

The terms and condition hereof, including the Services provided, Materials covered, its specifications, the quantity of purchase, price and proprietary information of Purchaser, including but not limited to drawings, documents, electronic files and information relating to the production process and equipment (hereinafter "Information") shall be confidential.

Purchaser, at its discretion, may disclose such Information to Seller upon and subject to the following terms and conditions. Except as hereinafter provided, Seller shall (i) treat as confidential all Information which has been or is hereafter made available to Seller directly or indirectly by Purchaser, (ii) not disclose any such Information to any third parties; and (iii) not use any Information other than for compliance with the terms of the Purchase Order. The obligations imposed on Seller by the preceding paragraph shall continue in full force and effect for a period of five (5) years following the completion or termination of any Purchase Order whichever occurs first; provided however, with respect to Information relating to trade secrets, such obligation shall survive any such completion or termination. The obligations set forth in this section shall not, however, apply to any Information which (i) was known to Seller prior to disclosure to Seller by Purchaser as demonstrated by contemporaneous written records; (ii) at the time of disclosure to Seller is generally available or thereafter becomes available to the public by publication or otherwise through no act or failure to act by Seller; (iii) is hereafter made available to Seller from a third party who is in lawful possession of the information and who at the time has no obligation not to disclose it to Seller; or (iv) to extent obligated by law to be disclosed but only if Seller gives Purchaser written notice promptly after receipt of such notice and to afford Purchaser reason time to see appropriate protective order. On completion of the supply of the Materials or Services hereunder, or at any time upon the request of Purchaser, Seller shall return to Purchaser all tangible materials containing Purchaser's Information that have been furnished to Seller or its employees by Purchaser or that derive from the Information so provided, together with all copies thereof made by Seller or its employees.

ARTICLE 21. FORCE MAJEURE

Any delay or failure of either party to perform its obligations hereunder shall be excused to the extent that it is caused by any event or occurrence beyond the reasonable control of the party and without its fault or negligence, as by way of example but not of limitation, acts of God, actions by any governmental authority, fires, floods, windstorms, explosions, riots, natural disasters, wars or court injunction or order. During the period of such delay or failure to perform by Seller, Seller shall provide Purchaser with prompt written notice of such delay (including a description of the cause of the event or circumstance, an estimate of the duration of the delay and a statement regarding the remedial steps that are being undertaken to resume performance, Seller's interim allocation plans, if any). During such period, Purchaser, at its option, may purchase Materials and/or Services from other sources. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance that the delay will cease within thirty (30) days,

Purchaser may immediately cancel any Purchase Order without further liability.

Article 22. NOTICES

Any notice to be given hereunder shall be deemed sufficiently served when reduced to writing and either hand delivered or sent by registered or certified United States mail, addressed to the recipient party at the address provided by such party.

ARTICLE 23. ASSIGNMENT

Seller shall not delegate, assign or otherwise dispose of an interest in or under any Purchase Order without the prior written consent of Purchaser. For purposes of this provision, a change in control of Seller, including but not limited to the disposition by Seller of all or substantially all of its assets, shall constitute an assignment requiring the consent of Purchaser hereunder. Any attempted assignment or delegation in violation of this provision shall be null and void and at Purchaser's option, without prior written notice shall affect a cancellation of any Purchase Order and Purchaser's obligations hereunder.

ARTICLE 24. ADVERTISING

Seller shall not, without first obtaining the written consent of Purchaser, in any manner advertise or publish the fact the Seller has contracted to furnish Purchaser the Materials and/or Services.

ARTICLE 25. AMENDMENTS AND MODIFICATIONS

No change, modification, limitation, waiver, termination, rescission or discharge of any terms hereof shall be effective, and no conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the terms hereof shall be binding, unless agreed to in writing, and signed by an authorized agent of each party. Such amendments or modifications shall be in the form of a written supplement hereto and shall not be made or deemed made by email exchanges. The terms hereof constitute the entire agreement between the parties with respect to the Materials and Services and no other terms or conditions, whether verbal or written, shall apply thereto except by the written agreement of the parties. Not in limitation of the foregoing, in no event will the terms and conditions of Seller's order acknowledgements, Seller's standard terms and conditions, Seller's proposal, or any other document or instrument sent by Seller to Purchaser in connection with the purchase of Materials or Services hereunder act to amend or supplement the terms and conditions herein unless agreed to in writing by both parties as described above.

ARTICLE 26. SEVERABILITY

If any provision hereof is held invalid, such invalidity shall not affect the other provisions hereof that can be given effect without the invalid provision, and, to this end, the provisions hereof are declared to be severable, and the terms hereof shall be enforced to achieve, as closely as possible consistent with all applicable law, the spirit and intent of the invalid provision.

ARTICLE 27. INDEPENDENT CONTRACTOR

Seller is and shall remain an independent contractor in the performance of the Services performed hereunder, and all persons employed by Seller to perform work hereunder shall be and remain employees of Seller subject to the supervision of Seller's supervisory personnel. It is expressly understood that Purchaser is interested only in the results obtained by Seller, and neither Purchaser nor any supervisory employee of Purchaser shall have the right to direct or control the details or method of performance by Seller's employees of any authorized work hereunder. Seller shall deduct and pay and remain liable for the payment of all social security and employment taxes and contributions applicable to the wages and salaries of all persons employed by Seller, including those furnished to Purchaser by Seller hereunder. In the event of any claim against Purchaser for payment of such taxes, Seller shall defend such claim at its sole cost and expense and shall indemnify Purchaser and hold Purchaser harmless from and against any such taxes as well as for any claims, losses, damages, costs or expenses (including reasonable attorneys' fees) incurred by Purchaser in connection therewith. Except as provided in this section, all other terms and conditions hereof shall remain in full force and effect, including without limitation all provisions limiting the liability of the parties hereunder. In the event that the work is provided for in the State of Louisiana, the parties hereby stipulate, pursuant to Louisiana Statute La. R.S. 23:1061(A)(3), that Purchaser be and hereby is designated as the statutory employer of Seller's direct and statutory employees and for the direct and statutory employees of subcontractors of Seller. The parties further agree that the Services required of Seller and its direct and statutory employees, and the direct and statutory employees of its subcontractors, pursuant to these terms and conditions are an integral part of and essential to Purchaser's ability to generate goods, products and services.

ARTICLE 28. CONFLICT OF INTEREST

Seller warrants that it has not given nor received any commissions, payments, gifts, kickbacks, lavish or extensive entertainment or other things of value to or from any employee or agent of Purchaser or any third party in connection with the supply of Materials or Services to Purchaser and acknowledges that the giving or receiving of any such payments, gifts, entertainment, or other things of value is strictly in violation of Purchaser's corporate policy and may

result in the cancellation of this and all future orders. Seller shall notify Purchaser's security department of any such solicitation by any of Purchaser's employees, agents or any third party.

ARTICLE 29. AUDIT

Purchaser may, upon its request, audit any and all records of Seller relating to Material and/or Services provided hereunder; provided, however, Seller may exclude any trade secrets, formulas, or processes from such inspection. Seller further agrees to maintain its books and records relating to Material and/or Services provided hereunder for a period of two (2) years from the date such Material and/or Services were provided and to make such books and records available to Purchaser at any time or times within the two-year period.

ARTICLE 30. FEDERAL CONTRACTOR

Unless exempt, Contractor and any subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identification or national origin.

Moreover, these regulations require that covered prime Contractor and subcontractor, if any, take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identification, national origin, protected veteran status or disability. If applicable, Contractor and subcontractor, if any, shall also abide by the requirements 41 CFR § 61-300.10 regarding veterans' employment reports and 29 CFR Part 471, Appendix A to Subpart A regarding posting a notice of employee rights. The word "Contractor" in the above regulations and clauses means Seller or Seller as applicable.