

**1. DEFINITIONS.** For purposes of this purchase order, including these general terms and conditions and all attachments, as well as any modifications adopted in accordance with Section 19 (collectively, the "Agreement"), the term "Purchaser" shall mean the party issuing this Agreement and the term "Seller" shall mean the individual, firm, corporation or other entity identified on this Agreement from whom the goods, materials or services have been ordered by Purchaser.

**2. APPLICABLE TERMS AND CONDITIONS.** This Agreement is an offer and expressly limits acceptance to the terms of this Agreement. Notification of objection is given to any term in any response that does not exactly match the terms of this Agreement. This Agreement constitutes an offer to Seller by Purchaser to enter into an agreement and upon acceptance by Seller will be a complete and exclusive statement of the agreement between Purchaser and Seller. The terms and conditions of the Agreement are those terms and conditions that are set forth herein and in any attachments or documents specifically incorporated into this Agreement by reference. Any acknowledgment of this Agreement by Seller or any shipment or delivery of any materials, goods or services referred to in this Agreement, constitutes acceptance by Seller of this Agreement. Any terms and conditions contained in Seller's invoices, work orders, packing slips, or any other agreements that are inconsistent with this Agreement are superseded and governed by this Agreement and are not effective or binding on Purchaser.

**3. INVOICES; ASSIGNMENT OF PAYMENT.** No invoice may be submitted more than 90 days after the shipment or tender of the goods, materials, or services, and Seller waives any invoice not submitted within said 90 day period. Standard payment terms are net 60 days. Regarding all sales, use, duty, excise or other similar taxes or charges (collectively "Taxes") Purchaser will only be required to pay those Taxes (a) for which Purchaser has not furnished or agreed to furnish an exemption certificate, and (b) which are specifically identified as the responsibility of Purchaser pursuant to this Agreement. Unless otherwise specified in this Agreement, the price stated in this Agreement includes all charges and expenses of Seller, including, but not limited to, packing, crating, cartage and any and all applicable federal, state and local taxes and duties. Purchaser is entitled at any times to setoff any amount owed by Seller to Purchaser against any amount payable by Purchaser under this Agreement. Purchaser's entitlement to setoff under this Agreement is in addition to any right of set off or recoupment provided by law. For purposes of any set off or recoupment, the amounts due from Seller to the Purchaser includes all amounts due from Seller and its respective affiliates and subsidiaries to Purchaser and its affiliates and subsidiaries.

**4. LIEN WAIVERS.** For good and valuable consideration, including the negotiated price for the goods, services or materials under this Agreement, Seller unconditionally waives and releases any and all mechanics' lien rights or claims of lien rights against the premises, project, Purchaser funds due or the project fund. Upon request of Purchaser, Seller shall execute on behalf of itself and obtain from any of Seller's subcontractors and any other persons, firms, corporations, or entities possessing any right to any lien under applicable law, interim or final affidavits and lien waivers for any performance or work done hereunder and for any items sold hereunder or services performed hereunder in exchange for interim or final payment from Purchaser.

**5. TRANSPORTATION.** Seller shall transport all goods and materials subject to this Agreement F.O.B. destination. Seller is responsible for any and all loss or damage to the goods or materials until delivered to Purchaser at the F.O.B. destination specified in this Agreement.

**6. DELIVERY SCHEDULE.** Seller shall deliver goods and materials at the time(s) and in the quantities specified in this Agreement or in supplementary schedules furnished to Seller by Purchaser. Purchaser has no liability for payment for materials, goods or services delivered that are in excess of quantities specified in this Agreement and Purchaser's count shall be accepted by the parties as conclusive on all shipments not accompanied by a packing slip. Delivery is not deemed complete until materials, goods or services have been actually received and accepted by Purchaser.

**7. WARRANTIES.** Seller expressly represents and warrants that it has good and marketable title to the goods, materials, and services covered by this Agreement and that such goods and materials will (a) conform to any and all specifications, instructions, samples and other descriptions, whether express or implied, furnished to Seller by Purchaser; (b) be fit and sufficient for the purpose(s) for which they were manufactured and sold, (c) be fit for additional particular purposes if Seller knows or has reason to know of any additional particular purpose(s) for which Purchaser intends to use such goods, materials or services; (d) be new and merchantable; (e) be of good material and workmanship and free from defects, whether patent or latent; and (f) be free and clear of all liens and encumbrances of any kind whatsoever. All warranties, express and implied, shall run to Purchaser, its successors, and assigns and to all persons who purchase from Purchaser or use such goods, materials or services, alone or in combination with other goods, material or services. No limitation by Seller of Seller's warranty liability shall be effective. Seller hereby extends any and all warranties received from its suppliers to Purchaser. Upon the request of Purchaser and without expense to Purchaser, Seller shall replace or correct defects in any goods, materials, or services not conforming to the warranties in this Agreement promptly when notified.

**8. INSPECTION AND REJECTION.** All goods, materials or services are subject to Purchaser's right of inspection and rejection within a reasonable time after arrival at the ultimate destination. Payment does not constitute an acceptance, and Purchaser reserves the right to reject goods, materials, and services despite payment. Seller shall promptly reimburse Purchaser for all expenses resulting from or associated with Purchaser's rejection of goods, materials or services.

**9. CANCELLATION.** Purchaser may cancel, or postpone performance, of any goods, materials or services covered by this Agreement, in whole or in part, by providing written notice to Seller prior to delivery. Cancellation under this paragraph does not waive any legal rights Purchaser may have and will not result in any additional charges.

**10. DRAWINGS AND SPECIFICATIONS.** If Purchaser requests, Seller shall submit drawings and specifications to Purchaser for approval. If the drawings and specifications under this paragraph are created especially for Purchaser or pursuant to paragraph 15 below, Seller shall not use or permit others to use such drawings and specifications for any other work.

**11. INDEMNIFICATION.** Seller shall indemnify, defend, and hold Purchaser and its affiliates and their respective agents harmless from and against any and all suits, claims, liabilities, judgments, environmental cleanup costs, damages, fines, settlements, costs, losses, payments, injuries (including death), or expenses (including reasonable legal fees) asserted against, or incurred by Purchaser, which arise out of or in connection with any one or more of the following: (a) Seller's breach, actual or alleged, of this Agreement; (b) the willful or negligent acts or omissions of Seller or Seller's agents; (c) injury or death to Seller or Seller's agents while on Purchaser's premises, whether actual or alleged, except to the extent caused by Purchaser's gross negligence or intentional misconduct.

**12. COMPLIANCE WITH LAWS.** In the performance of this Agreement, Seller shall comply with all applicable federal, state and local laws, rules, regulations and executive orders, including, but not limited to, those that prohibit discrimination in employment, the Fair Labor Standards Act of 1938, the Occupational, Safety and Health Act, and the Mine Safety and Health Act.

**13. INSURANCE.** Seller shall maintain the insurance in minimum amounts specified as follows: (i) Commercial General Liability, Each Occurrence - \$1,000,000, Personal Injury and Advertising - \$1,000,000, General Aggregate - \$1,000,000, Products/Completed OP Aggregate - \$1,000,000; (ii) Automobile Liability, Combined Single Limit (Ea Accident) - \$1,000,000; (iii) Workman's Compensation - Statutory Limits; (iv) Employers Liability, Each Accident - \$1,000,000, Disease Ea. Employee - \$1,000,000, Disease Policy Limit - \$1,000,000. Seller shall name Purchaser and its affiliates as an additional insured on its Commercial, General, and Auto Liability policies. Seller's insurance shall be primary and non-contributory, and include a waiver of subrogation in favor of Purchaser and its affiliates. Seller shall furnish Purchaser with certificates confirming such coverage during the term of this Agreement.

**14. PRICE COMPETITIVENESS.** Seller warrants that prices specified in this Agreement are not higher than those charged other customers for the same type of goods, materials or services in similar quantities or the same type of services.

**15. PATENT PROTECTION.** When this Agreement covers engineering or designing of devices, methods, or systems according to Purchaser's instructions or requirements, Seller agrees that all designs and inventions made in the performance of the work done pursuant to this Agreement will promptly be disclosed to and become the sole property of Purchaser. Seller further agrees, without cost or expense to Seller to execute, or obtain the execution of such papers, including patent applications and assignments, and to perform such acts as may be necessary to perfect Purchaser's ownership of the designs and inventions.

**16. ASSIGNABILITY.** Seller may not assign or transfer this Agreement in whole or in part without the prior written consent of Purchaser.

**17. GOVERNING LAW/VENUE.** The parties agree that the validity, interpretation and performance of any agreement arising out of this Agreement is governed by the laws of the State of Ohio without regard to conflicts of interest laws. Purchaser and Seller submit to the exclusive jurisdiction for the resolution of any disputes, to the Common Pleas Court of Tuscarawas County, Ohio or if permitted, the Federal District Court for the Northern District of Ohio. These are the sole and exclusive jurisdictions and venues for the purpose of adjudication of any rights and liabilities arising from or related to this Agreement.

**18. NOTICES.** All notices and other correspondence shall be directed to the respective parties at the addresses in this Agreement.

**19. MISCELLANEOUS.** This Agreement is the sole and exclusive statement of the parties' understanding and agreement with respect to the transactions contemplated by this Agreement, notwithstanding any other terms that might be contained in any sales invoice or other agreement received from Seller or submitted to Purchaser. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used herein. This Agreement can only be modified or changed in writing and signed by authorized representatives of both parties. The failure of either party to enforce any term or condition of this Agreement does not constitute a waiver by that party. If any clause or portion of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining clauses and or portions of them will remain in full force and effect. The terms "goods, materials, or services" shall refer to the items individually, jointly, or in any combination. The remedies herein reserved are cumulative and additional to any other or further remedies provided by law or equity or made by Seller.