

TERMS AND CONDITIONS

1. Scope of Duties. Seller shall provide the material, goods, work, equipment, services and all other items, requirements, and obligations described in or referenced in this Purchase Order (collectively called "Goods"). Seller shall be bound by and strictly comply with: (a) all terms and conditions of this Purchase Order, all of which are material; (b) all applicable plans, specifications, and requirements of any other Contract between Owensboro (herein called the "Buyer") and the Seller, the other Contract being incorporated in this Purchase Order by reference; and (c) all applicable laws pertaining to the Goods and Seller's performance of this Purchase Order. Seller shall comply with anything pertaining to the Goods or other subject matter of this Purchase Order which is mentioned in the specifications for the Project but not shown on the drawings for the Project or shown on the drawings but not mentioned in the specifications as if shown and mentioned in both. If there is any conflict or ambiguity between the specifications and drawings or within either of them, Seller shall provide or perform that which is of the higher quality, greater quantity or extent, or more expense unless Buyer otherwise directs in writing. In the event of conflict or inconsistency in payment or other terms of this Purchase Order and any other applicable Contract, this Purchase Order controls.

2. Risk of Performance. Seller represents that it is relying solely upon its own expertise and investigations with respect to means, methods, risks, costs, time and difficulties in performance of the Purchase Order and not upon any information provided, assurances given, or statements made by the Buyer unless expressly set forth in writing in this Purchase Order. Seller assumes all risks of performance of this Purchase Order. Seller shall not refuse or delay delivery of Goods when and as required and shall not be entitled to increase the price of Goods nor to any other relief on account of higher costs, delays, shortages, or other difficulty with respect to acquisition of materials or to performance of this Purchase Order whether caused by or attributable to Seller, Seller's suppliers and subcontractors, market conditions, or any other factor whatsoever that is not exclusively within Buyer's sole control, regardless of whether such difficulty existed or was anticipated at the time of signing this Purchase Order or arose thereafter, however, the Seller shall not be liable for damages incurred by Buyer to the extent caused by Buyer's negligence or breach of these terms and conditions.

3. Submittals. Seller shall deliver shop drawings, product data, samples, and other information pertaining to the Goods (collectively referred to as "Submittals") when and as required. Submittals must be approved in writing by Buyer; and the Architect, Engineer, or other applicable design professionals for the Project, (all being collectively referred to as "A/E"). Approval of Submittals shall not constitute approval of deviations or changes, unless there is express and specific approval of the deviation or change in a written change order signed by the Buyer. Seller bears all risk and liability of proceeding without Submittals fully approved in writing by Buyer; and A/E, if applicable. Seller shall pay Buyer for all additional costs, including all delays and disruptions in performance incurred by Buyer or others to whom Buyer may be liable as a result of late, incomplete, or rejected Submittals and as a result of defective or

nonconforming Goods, including deviations, substitutions, or changes not specifically authorized in advance.

4. Risk of Loss and Title. Seller shall bear and insure against all risk of loss or damage to Goods until delivered to Buyer in accordance with the terms on the face page of this Purchase Order, properly determined to be conforming, and accepted by Buyer. To secure Seller's faithful performance of this Purchase Order, Seller grants to Buyer a security interest in all Goods which are identified in or referenced by this Purchase Order. Neither the transfer of risk of loss nor passing of the title shall diminish or adversely affect warranty, indemnity, and other obligations of Seller under this Purchase Order.

5. Inspection, Acceptance, and Returns. The Seller and all Goods shall strictly comply with this Purchase Order and shall be subject to approval of Buyer; and A/E, if applicable. All Goods shall be received subject to Buyer's rights of inspection and rejection at the destination specified by Buyer. Proof of delivery and acceptance of Goods must be in writing signed by an authorized representative of Buyer. Acceptance or payment of any part of the Purchase Order shall not bind Buyer to accept future shipments nor limit the exercise of any other remedy which Buyer may have. Buyer; and A/ E, if applicable, and other authorized representatives of the Buyer shall have the right, but not the obligation, to inspect the Goods at all reasonable times and places during manufacture and both before and after delivery. Approval shall not be final until the Goods have been unpackaged, fully assembled, incorporated into the Project, and demonstrated to fit and function for the purposes intended. Rejected Goods shall be held at Seller's risk, and all returns shall be at Seller's expense. If Goods are to be returned for any reason, Seller shall give Buyer written notice before said Goods are removed from the Project site, specifying all alleged damages, all missing parts or items, and all other claimed reduction in value of said Goods. Seller shall afford Buyer an opportunity, which is reasonable under the circumstances, to inspect said Goods at the Project site following said written notice. Seller's failure to give Buyer this written notice and opportunity to inspect shall constitute Seller's waiver of claims and release of Buyer from all liability pertaining to the condition and quantity of returned Goods and from all liability for any damages claimed with respect to the Goods.

6. Seller's Warranties. In addition to any other warranties required by any other Contract or otherwise implied by law or fact, Seller hereby guarantees and warrants that all Goods hereunder shall be: new; of good and proper material and workmanship; free from defects in design, manufacture, and fabrication; fit, safe, sufficient for the purposes intended, merchantable and in strict compliance with all plans, specifications, and other requirements of this Purchase Order. Seller's warranties shall extend for the period specified in any other Contract incorporated herein or, if no period is specified, for the same period Buyer may have liability with respect to the Goods. Any replacement of materials or corrections to workmanship shall be additionally warranted as above for at least one (1) year after the date of remedying said defect or for such longer period of time as may be provided for Goods generally. All warranties survive any inspection, delivery, acceptance or payment. Seller's warranties in this Purchase Order are in

addition to any other warranties provided by law or by separate agreement. Upon demand by Buyer, Seller shall provide adequate assurance, by bond or other means acceptable to Buyer, that Seller will comply with this Purchase Order, including all warranties.

7. **Time and Delivery.** Time is of the essence of this Purchase Order. Seller accepts Buyer's right to schedule Seller's performance of this Purchase Order and consents to Buyer's right to adjust such schedules as Buyer in good faith deems best for the Project as a whole. Seller shall deliver Goods in accordance with Buyer's direction as to time, order, sequence, quantities, and location. Buyer reserves the right, at Seller's sole expense, to cancel, reject, refuse, or cause redelivery of any shipment of Goods which Seller attempts to deliver before or after the dates for delivery specified by Buyer. Delivery shall not be deemed to be complete until Goods have been actually received and accepted in writing by Buyer. Seller shall provide Buyer a current Material Safety Data Sheet for each of the Goods delivered.

8. **Buyer's Remedies.** If Goods do not comply in all respects with this Purchase Order, including but not limited to the foregoing guarantees and warranties by Seller, or if Goods are otherwise disapproved by the Buyer; and/or A/E, if applicable, Buyer shall have the right at Buyer's election and at Seller's cost: (1) to require Seller to replace immediately such defective, non-conforming, or objectionable Goods with Goods compliant with this Purchase Order or otherwise as specified by Buyer, (2) to require Seller at times and in the manner directed by Buyer to remedy any defects, latent or patent, (3) to purchase substitute, replacement, or supplementary Goods in the open market, or (4) to exercise any other right or remedy which Buyer, in good faith, determines to be reasonable under the circumstances to maintain the Project schedule, to discharge Buyer's duties with respect to the Goods and Seller's performance of this Purchase Order, and to protect Buyer from liability and risk of loss. Seller shall pay Buyer's costs, expenses, and damages of whatever nature, including actual, liquidated, incidental and consequential damages, and attorneys' fees, incurred by Buyer as a result of Seller's failure to deliver Goods in strict conformance with this Purchase Order and in accordance with Buyer's schedule and directions and as a result of any failure by Seller to perform any obligation of this Purchase Order in a timely, proper, safe, complete, and satisfactory manner. Said remedies are in addition to any other remedies which Buyer may have in law or equity.

9. **Price.** Price for the Goods, including Seller's complete performance of this Purchase Order, is as stated on the face page of this Purchase Order. Unless specifically provided otherwise, the stated price includes all taxes, freight, fees, insurance, assessments, and charges of whatever nature associated with the Goods and with Seller's complete performance of this Purchase Order. No increases in price of any kind will be permitted unless, prior to incurring the additional costs claimed, Seller obtains a written change order signed by Buyer.

10. Indemnification. To the fullest extent allowed by law, Seller shall defend, indemnify, reimburse, save harmless, and exonerate Buyer from and against all claims, liability, economic loss, expense, or damage of whatever nature (including but not limited to reasonable attorneys' fees and consequential damages) arising from or being caused in whole or part by the Goods or by Seller's performance or nonperformance of this Purchase Order. Seller's indemnity and defense obligations shall survive acceptance of the Goods

and payment therefor by the Buyer and shall extend for as long as Buyer has any liability with respect to the Goods and for Seller's performance of this Purchase Order.

11. Payment. Subject to the terms and conditions of this Purchase Order, Buyer agrees to pay Seller's approved invoices, less retainage, for conforming Goods timely delivered and suitably stored at the Project or incorporated into the work within thirty (30) working days after Buyer's receipt of Seller's correct invoice and other information required herein. Notwithstanding anything to the contrary in this Purchase Order, or in any bond or other document, Buyer's signed proof of delivery and acceptance of Seller's Goods shall be an absolute conditions precedent to any right of the Seller to receive any form of payment whatsoever from Buyer. Seller's acceptance of payment constitutes a general release of Buyer from all claims and liability of whatever nature, whether known or unknown, which arise out of or relate to events occurring through the date of payment. No payment, including final payment, shall be construed as acceptance of defective, incomplete or nonconforming Goods, and Seller shall remain responsible for full performance in strict compliance herewith.

12. Termination by Buyer. Seller's failure to comply strictly with all terms and conditions of this Purchase Order shall entitle Buyer to terminate this Purchase Order for default and to do one or more of the following, all of Seller's expense: take possession and exercise of rights of ownership of all Goods which can be identified to this Purchase Order or which are capable of being used, whether such Goods are at the Project site, on Seller's property, or otherwise and regardless of whether title has previously passed to Buyer; procure Goods, in whole or in part, elsewhere; use Seller's forms, molds, dyes, jigs, scaffolding and other materials and equipment necessary to make, deliver, and/or install Goods; and perform or arrange with others to perform all unfulfilled obligations of this Purchase Order. Seller shall pay all of Buyer's costs, expenses, and damages of whatever nature including, without limitation, attorneys' fees and consequential damages, arising from or attributable to said failure. Buyer shall also have such rights and remedies as are allowed by law. In the event of termination for default, Seller shall not be entitled to any further payments until all requirements of this Purchase Order have been fully satisfied, and then only to the extent the unpaid Purchase Order balance exceeds all costs, expenses, and damages incurred by Buyer in completing the Purchase Order and any further damages of whatever nature that Buyer may have sustained as a result of Seller's default.

Buyer reserves the right to terminate this Purchase Order for Buyer's convenience without any breach or fault by Seller. Buyer may exercise its right of convenience termination at any time upon notice to Seller and with respect to all or any part of this Purchase Order. If this Purchase Order is terminated for Buyer's convenience, Seller shall be paid either (a) the proportion of the Purchase Order price for conforming Goods for which Seller has obtained written proof of delivery and acceptance signed by Buyer or (b) Seller's actual and documented costs of producing acceptable Goods plus a single markup of 10%, whichever is greater.

If Buyer terminates the Purchase Order for default but it is determined that Seller was not in default as of the termination, the termination will be regarded as for Buyer's convenience and Seller's sole and exclusive remedy against Buyer shall be amounts payable under the convenience termination provisions above. In no event shall Seller be entitled to anticipated or

lost profits nor to payment for portions of this Purchase Order which have not been performed nor to special, consequential, or exemplary damages alleged to have resulted from Buyer's breach or termination of this Purchase Order. Regardless of whether the termination is for Seller's default or for Buyer's convenience, all Goods completed or partially completed prior to termination shall become the Buyer's property or, at Buyer's option, the salvage value of the Goods may be deducted from any amount due Seller by reason of termination. Buyer reserves all rights and remedies provided by law, in addition to those set forth herein.

13. Assignments. Without the prior written consent of Buyer, Seller shall not make any contract with any other entity for furnishing any of the Goods covered by this Purchase Order, nor shall Seller assign this Purchase Order or any payment or other right hereunder. Seller shall remain fully liable to Buyer for performance of this Purchase Order even if Buyer permits Seller to assign rights or delegate duties, and any such assignment or delegation is subject to all terms and conditions of this Purchase Order.

14. Disputes. This Purchase Order is made in, and shall be governed by the laws of the Project location. Any claims or disputes arising out of or related to this Purchase Order shall be resolved by binding arbitration in accordance with the current and applicable rules of the American Arbitration Association, with one exception as follows: if any claim, dispute, or matter in controversy with Seller also involves rights or liabilities of the A/E, or other third party, then, the parties agree to resolve such issues in the same forum or proceeding, including arbitration, court, or administrative process, which has jurisdiction over some or all claims, disputes, and matters in controversy involving the A/E, or other third party so as to promote economy and avoid inconsistent results. Notwithstanding the existence of any dispute, claim, or matter in controversy, Seller shall proceed diligently with complete and timely performance of this Purchase Order.

15. Compliance with Laws. Seller hereby represents and warrants that the Goods hereunder are not produced, manufactured, sold, packaged, marketed, transported or priced in violation of any federal, state or local law and do not violate or infringe upon any patent, trademark or other rights of third parties. Seller shall have full and exclusive liability for the payment of all income, gross receipts, sales, use, or any other taxes applicable to materials, equipment, labor, or services relating to the Goods and obligations covered by this Purchase Order. In the event Buyer pays any such tax or payment on behalf of Seller, Seller agrees to fully reimburse Buyer upon demand for the amount thereof (including penalties and interest).

16. Effect of Purchase Order. This Purchase Order constitutes the parties' final and entire agreement and their complete and exclusive statement of all consideration, terms, and conditions. This Purchase Order supersedes all prior proposals, quotations, inducements, consideration, negotiations, and representations, whether oral or written, with respect to the subject matter hereof. This Purchase Order cannot be modified or terminated except in writing signed by an authorized representative of the Buyer. This Purchase Order shall be binding upon and shall be enforceable by the successors in interest of the Buyer and Seller, but otherwise nothing herein is intended nor shall be construed to impose any duties, create any rights, or provide the basis of any liability or cause of action in favor of any party other than Seller and Buyer. The terms and conditions of this Purchase Order are severable and the validity or unenforceability of any term

or condition of this Purchase Order shall not invalidate, render unenforceable, or adversely affect the remaining terms and conditions. This Purchase Order requires an entire and indivisible performance by Seller, notwithstanding payments to Seller in installments. The failure or delay by Buyer to exercise rights as regards any noncompliance by Seller shall not constitute a waiver of such rights as to any continuing or subsequent noncompliance. All of Buyer's rights and remedies shall be cumulative and may be exercised in such order and in such combinations as Buyer may choose.

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