



## PURCHASE ORDER GENERAL TERMS AND CONDITIONS

1. **ENTIRE AGREEMENT.** This Purchase Order (PO) constitutes an offer to contract and shall not be construed as an expression or acceptance of any offer previously made. Any acceptance of this PO is expressly limited to and must be made exclusively in accordance with the terms stated herein and Purchaser hereby objects to any additional, conflicting or different terms in any acceptance hereof. Seller agrees to be bound to all of the terms and conditions of the Prime Contract for which the Items (as defined below) are ordered. Commencement of services or shipment of any part of the goods covered by this PO constitutes acceptance of all its terms and conditions. No prior or current course of dealing, usage, or trade or custom of the industry shall modify or supplement the terms of this PO. In no situation shall Purchaser be bound by the provisions of any delivery ticket, invoice or other document furnished by Seller.
2. **WARRANTIES.** Seller warrants that all goods, materials, equipment, and other products supplied under this PO (collectively "Items"): (a) meet the manufacturers' specifications, are of "merchantable" quality, and are fit for the particular purpose for which they are intended; and (b) are in strict accordance with specifications for the project in which they will be used. Seller shall only deliver Items intended for incorporation into any project that comply with applicable Buy American Act or domestic product preference requirements. Seller further warrants that Seller has a good and marketable title to the subject Items, that they are free and clear of all liens and encumbrances whatsoever and it is expressly understood that to the fullest extent permitted under applicable law, Seller and its suppliers shall be without authority to create or incur any mechanics' or suppliers' lien of any kind against any property or project of Purchaser for items supplied pursuant to this PO. Seller agrees that it will defend, indemnify, and hold Purchaser harmless from any and all claims or liens contrary to these provisions.
3. **RISK OF LOSS.** The risk of loss from any casualty to the Items shall remain with Seller until accepted by Purchaser.
4. **PERFORMANCE, DELIVERY, CHANGES.** All Items shall be delivered to Purchaser within the time specified. If not so delivered, this PO shall, at the option of the Purchaser, be canceled and Purchaser shall be under no obligation to accept or pay for said Items. For deliveries hereunder: (1) Seller shall monitor all weight regulations and shall not leave or enter Purchaser project or property with an overweight, unsecured, or unsafe load; (2) Seller shall securely fasten all loose loads or take any other necessary action to prevent material from escaping from the delivery vehicle; (3) In the event that Purchaser provides any gear, equipment, or services for securing the load, such is provided at Seller's sole risk and judgment as to fitness and suitability; (4) Purchaser shall have no duty to direct or supervise Seller's work; however, Seller will correct, abate, and/or eliminate conditions that Purchaser observes and identifies to the Seller to be hazardous; (5) Purchaser's failure to recognize and stop the Seller from a hazardous condition shall not relieve the Seller of its responsibility to avoid or correct such hazardous condition; (6) To the fullest extent permitted by law, Seller shall defend, indemnify, and hold Purchaser harmless from and against claims, damages, fines and/or penalties including safety violations related to Seller's deliveries including, but not limited to, securing the load; (7) Seller shall comply with all applicable hazardous waste rules, laws and regulations, whether federal, state or local; (8) All delivery personnel will arrive with their own PPE including: hard hat, eye protection, safety-toed footwear, and high visibility safety vest; and (9) All PPE will be worn at all times at Purchaser's project and property locations. Purchaser will not be responsible for any Items unless furnished in strict compliance with a fully executed PO. Substitutes, changes or delays are hereby rejected unless confirmed in writing by Purchaser. Purchaser reserves the right to make claim for adjustment or credit on any Items or parts of Items that are defective, non-compliant or otherwise unsatisfactory.
5. **TAXES.** The purchase price includes all federal, state and local taxes, unless otherwise specifically indicated on the cover page(s). If any Seller invoice includes federal, state or local taxes they shall be line itemized separately on the invoice. Seller shall separately account for, and remit to Purchaser, any taxes that are collected improperly or illegally by Seller. Seller understands, acknowledges and agrees to be bound by all applicable federal, state and local laws and regulations in effect at the time Seller executes this PO and is responsible for all tariffs, duties, taxes, and fees that are required by law to be paid to any foreign or domestic agencies associated with the acquisition, delivery and importation of the materials identified in this PO.
6. **INSURANCE AND CLAIMS.** Prior to Seller, its employees or agents accessing Purchaser's premises or project in connection with this PO, including delivery, Seller shall obtain and maintain commercial general liability insurance covering bodily injuries (including death) and property damage in the amount of \$1,000,000 per occurrence, and automobile liability insurance covering property damage and bodily injuries (including death) in the amount of \$1,000,000 per occurrence or in such larger amounts specified by Purchaser. Seller shall also provide and maintain workers' compensation insurance in conformity with the laws of the state in which such premises or project is located, including USL&H and Jones Act coverages, if applicable, and employer's liability insurance in the amount of \$1,000,000 per occurrence. Seller shall submit written proof of such insurance waiving subrogation against Purchaser on all coverages, unless prohibited by law, and, with the exception of workers' compensation, naming Purchaser, the project Owner, and all persons required to be indemnified under the Prime Contract as additional insured (or alternate employer). Such insurance shall be primary to and non-contributory with any other insurance available to Purchaser. Seller shall give Purchaser thirty (30) days' prior written notice of cancellation of any such insurance and provide evidence of replacement coverage prior to accessing any of Purchaser's premises or projects. Purchaser's payment hereunder, its assent to Seller's performance and/or coverage or limits less than the minimums required, and/or failure to insist on performance of any item, condition or instruction or to exercise any right or privilege provided hereunder, or its waiver of any breach, shall not thereafter waive any term, condition, instruction, right, or privilege under this PO.
7. **PAYMENT TERMS.** Unless otherwise mutually agreed in writing, Seller will be paid for Items within thirty (30) days following Purchaser's: (a) receipt and acceptance thereof; or (b) receipt of Seller's invoice therefor, whichever is later. In any event, receipt of a fully executed release and waiver of liens with respect to Items received and accepted, in the form provided by Purchaser, is a condition precedent to payment.
8. **NONDISCRIMINATION AND OTHER PROVISIONS REQUIRED BY LAW.** The Equal Employment Opportunity clause in Section 202 of Executive Order 11246, as amended, is incorporated herein by this reference. Seller shall at all times comply with all **applicable** laws, rules and regulations related to employees and to sourcing, tracking, screening, interviewing and selecting applicants, including but not limited to nondiscrimination, equal opportunity and affirmative action employment requirements. Purchaser is a federal construction contractor. Accordingly, Seller shall also abide by the requirements of Executive Order 11246 (41 CFR 60-1, 60-4, 60-20, and 60-50), the Vietnam Era Veterans Readjustment Assistance Act of 1974 (41 CFR 60-300), Section 503 of the Vocational Rehabilitation Act of 1973, concerning individuals with disabilities (41 CFR 60-741), the Uniform Guidelines on Employee Selection Procedures (41 CFR 60-3), Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A) (relating to the notice of employee rights under federal labor laws), and Executive Order 13665 on Pay Transparency (41 CFR 60-1.35), **as applicable**. These regulations prohibit discrimination against all individuals based on their race, color, religion, creed, sex, sexual orientation, gender identity or expression, national origin, citizenship status, immigration status, age, ancestry, political affiliation, physical or mental disability, military or protected veteran status, pregnancy, childbirth or related medical condition, genetic information or any other classification protected by applicable federal, state or local law. Where applicable, these regulations require that Purchaser and Seller take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, and disability. In furtherance of this provision, in the event of a federal audit, Seller will, at Purchaser's request, provide Purchaser with employment, applicant sourcing, and application documentation required to demonstrate compliance to the extent applicable. Seller shall indemnify, defend and hold harmless

Purchaser from any claims or damages including underpayment, fines, penalties, interest, attorney's fees and costs, resulting from Seller's failure to comply with any applicable federal state or local laws, rules and regulations, related to labor or employment, including Seller's failure to pay the correct government-mandated wages. If this agreement is: (i) a procurement contract for construction covered by the David-Bacon Act (DBA); (ii) a contract for services covered by the Service Contract Act (SCA); (iii) a contract for concessions; or (iv) a contract in connection with Federal property related to offering services, Seller shall also comply with the requirements of Executive Order 14026: \$17.20 as of 1/1/2024 and the implementing regulations, requiring the payment on certain federal contracts of such minimum hourly wages (with annual increases thereafter).

**9. FEDERAL CONTRACT COMPLIANCE. This section applies to purchases from Seller that are in support of any contract between Purchaser and the Federal Government ("Federal contract").**

a. **SELLER CERTIFICATION THAT SELLER AND ITS PRINCIPALS ARE NOT DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. This Section 9.a applies to the extent this PO is for the purchase of any Item(s) OTHER THAN COTS (defined below) in excess of the threshold specified in FAR 9.405-2(b) on the date of the subcontract award.** If this Section applies Seller agrees:

- i. Seller, by executing this PO, certifies that as of the time of award of the PO, neither the Seller nor any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. If such a Seller is unable to so certify, Seller shall immediately, and in any event before commencing performance or signing the PO, contact Purchaser's Ethics and Compliance Officer at (206) 762-0850.
- ii. The following clause (52.209-6) is incorporated into this PO with the term "Contractor" to mean Purchaser, and "subcontract" to mean any lower-tier agreement entered into by Seller for the performance of any portion of this PO. Further Seller shall comply with section (e) thereof, and include the same clause in lower tier agreements to the extent required.

**52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment**

(a) *Definition.* "Commercially available off-the-shelf (COTS)" item, as used in this clause—

(1) Means any item of supply (including construction material) that is—

- (i) A commercial item (as defined in paragraph (1) of the definition in Federal Acquisition Regulation (FAR) [2.101](#));
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of the threshold specified in FAR [9.405-2\(b\)](#) on the date of the subcontract award, with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed the threshold specified in FAR [9.405-2\(b\)](#) on the date of the subcontract award, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR [9.404](#) for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) *Subcontracts.* Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

- (1) Exceeds the threshold specified in FAR [9.405-2\(b\)](#) on the date of the subcontract award in value; and
- (2) Is not a subcontract for commercially available off-the-shelf items.

b. **FAR 52.204-10 Reporting Executive Compensation & First-Tier Subcontract Awards ("FFATA").** Pursuant to FAR 52.204-10, if the cumulative value of all purchases from Seller for any Federal contract exceed the applicable threshold (\$30,000 as of 05/07/21), Seller, as a recipient of funds from the Federal Government, shall provide information required by Purchaser to comply with FAR 52.204-10.

c. **FAR 52.211-14 & 15 Defense Priorities Allocations System (DPAS) Compliance. This Section 9.c applies if this PO is for a rated order.** If this PO is for a rated order certified for national defense, emergency preparedness, and energy program use under the Defense Priorities and Allocations System (DPAS) (15 CFR 700), Seller agrees to comply with the requirements of the applicable regulations.

d. **FAR 52.219-8 Utilization of Small Business Concerns. If this PO offers further subcontracting opportunities, FAR 52.219-8 is included herein by reference as required under FAR 52.219-9(d)(9).** In addition, if Seller is an other than small business concern as defined pursuant to Section 2 of the Small Business Act and relevant regulations promulgated pursuant thereto AND this PO is in excess of the applicable threshold specified in [FAR 19.702\(a\)](#) on the date of award, Seller shall be required to adopt a subcontracting plan that complies with the requirements of [FAR 52.219-9](#).

e. **FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems. This Section 9.e applies to the extent this PO is for the purchase of item(s) OTHER THAN COTS (defined above) wherein the Seller may have Federal contract information residing in or transiting through its information systems.** Seller agrees:

- i. For purposes of this clause, the term "Federal contract information" means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public websites) or simple transactional information, such as necessary to process payments. Other relevant terms are defined in FAR 52.204-21.
- ii. Seller shall apply at a minimum, the basic safeguarding requirements and procedures described in FAR 52.204-21 (b) to protect covered contractor information systems as defined in FAR 52.204-21(a).
- iii. Seller shall include the substance of the clause at FAR 52.204-21 (June, 2016), including this subsection c., in subcontracts (agreements with lower tier parties for the performance of any portion of this PO) under this PO (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the lower-tier party may have Federal contract information residing in or transiting through its information system.

**10. AUTHORIZATION; COUNTERPARTS; EXECUTION.** Each individual issuing a PO, commencing services or delivery as described in Section 1 above, and/or executing this PO or its counterpart, on behalf of the respective party, warrants that he/she is authorized to do so and that this PO constitutes the legally binding obligation of such party. This PO may be executed in any number of counterparts, each of which shall be deemed

an original and all of which together shall constitute a single instrument. If any evidence of execution (e.g. signature, initial) is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, it shall be a valid and binding obligation of the party executing (or on whose behalf it was executed) with the same force and effect as if such facsimile or “.pdf” were an original.

- 11. INDEMNITY AGREEMENT.** To the fullest extent permitted by law, Seller agrees to defend, indemnify and hold Purchaser, and all of its related or affiliated companies, employees, vessels and vessel owners (collectively “Purchaser”) harmless from any and all claims, demands, damages, losses and liabilities to or by third parties or employees of Seller, resulting from, arising out of, or otherwise connected with any services performed, materials supplied or other obligations of Seller under this PO except for the sole negligence of Purchaser. For purposes of this indemnity agreement, Seller specifically and expressly waives all immunity and limitation on liability that may be granted under any industrial insurance act and/or any other applicable workers’ compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such a claim. This waiver of immunity applies only to indemnity actions and does not authorize suits by Seller’s own employees against Seller. Seller understands the price agreed to by Purchaser and Seller is dependent upon the Indemnity Agreement reached above. Seller has been given the opportunity to alter the Indemnity Agreement, but the Seller has instead chosen to agree to indemnify Purchaser under this Agreement. This Indemnity Agreement has therefore been mutually negotiated by Purchaser and the Seller.
- 12. MANDATORY ARBITRATION.** This PO shall be governed by the law in which the Purchaser’s office that originated this PO is located. Any dispute arising under this PO shall be submitted to and resolved by binding arbitration by a single arbitrator in the county of Purchaser’s PO originating office, subject to the construction industry arbitration rules of the American Arbitration Association. Costs of the arbitration shall be borne equally by the parties. The substantially prevailing party shall be entitled to recover reasonable attorney’s fees in addition to any other relief granted by the arbitrator. Judgment upon any award made by the arbitrator may be entered in any court having jurisdiction and the parties hereby knowingly waive the right to a trial by jury with regard to any dispute hereunder.
- 13. SEVERABILITY.** If any provision of this Purchase Order or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of the PO and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.