



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 and shall ensure that the Prime Contract is incorporated into all of its lower tier agreements. With respect to Seller's work as defined by this PO Seller assumes toward Purchaser all of the duties, obligations and responsibilities that Purchaser assumes toward Owner. Commencement of services or shipment of any part of the Items 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. For purposes of this PO, Prime Contract means the Construction Contract between MMJV as Contractor and the Municipality of Anchorage dated April 25, 2025. The Prime Contract is available upon request.
- 2. WARRANTIES.** In addition to all warranties prescribed by law, 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. Seller shall, upon written request by Purchaser, furnish reasonable evidence that none of the materials or equipment purchased for the Project are the subject of any finance agreements, security interests or liens in favor of Seller. Seller shall provide Purchaser with written evidence from its lenders or creditors that any interest they may have in the materials and equipment purchased for the Project are released. 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, and that Seller will defend, indemnify and hold Purchaser harmless from claims to the contrary. Seller also warrants with respect to any services included that Seller (a) will perform any such services under this PO in an efficient, professional and workmanlike manner, using best of industry standards; and (b) that all services shall be free from defaults, errors, and omissions. Seller shall furnish all necessary equipment, labor, materials, mechanical and technical capability, tools and other facilities, items, and services necessary to complete the services required under this PO. In addition, Seller acknowledges that it knows of Purchaser's intended use and warrants that all Items and services covered by this PO that have been selected, designed, manufactured, assembled or supplied by Seller, will be fit and sufficient for that use. All warranties shall commence only upon the later of acceptance by Purchaser of all the Items and services supplied under this PO and shall continue thereafter for the greater of one (1) year from acceptance or as otherwise required under this PO, or as otherwise specified in the Prime Contract. These representations and warranties shall survive acceptance and subsequent use of resale or other disposition of the Items or services, as well as payment therefore by Purchaser, and shall also run to Purchaser's successors, assigns, customers and users of Purchaser's products that contain, incorporate or embody Items or services purchased under this PO. Purchaser objects to any provision limiting the Purchaser's rights or remedies under applicable law.
- 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. If Seller should default in performance of the work or should otherwise commit any act which causes delay to the Prime Contract work, Seller shall be liable for all losses, costs, expenses, liabilities and damages, including liquidated damages, sustained by Purchaser, or for which Purchaser may be liable to the Project Owner or any other party because of Seller's default, but only to the extent such damages are attributable to Seller's default. Purchaser shall also have the right at any time to make changes in drawings, designs, specifications, quantity and type of Items; packaging, time and place of delivery and method of transportation. Seller agrees to accept any such changes subject to this paragraph. All changes, however, must be in writing and signed by Purchaser. If any such changes cause an increase or decrease in the cost or time required for the performance, Seller shall promptly, within two (2) calendar days, notify Purchaser in writing that it intends to request an equitable adjustment to the contract time and/or price. Purchaser shall review and if Purchaser determines that any such changes do cause an increase or decrease in the cost and/or time required for performance of the work, an equitable adjustment shall be made and this PO shall be modified in writing accordingly. Seller shall perform under the PO as changed by Purchaser while negotiation or other determination of the equitable adjustment is taking place. In the event the Owner orders any such changes, Seller shall promptly, within two (2) calendar days, notify Purchaser in writing that it intends to request an equitable adjustment to the time or price so that Purchaser may present Seller's request to the Owner. Such requests for equitable adjustment shall be decided by the Owner, and if an equitable adjustment is approved, it shall be authorized by Change Order. Failure to provide timely notice under this Section shall constitute a waiver of Seller's right to make a claim therefor.
- 5. RIGHT TO INSPECT.** Purchaser and its designees shall have the right, but not the obligation, to have access to and inspect Seller's work to ensure that the work is proceeding in accordance with the terms of this PO and the Project schedule, and to be present at all tests and inspections, wherever located and at any stage of completion, including at the fabrication sites of Purchaser's subcontractors, vendors, and suppliers. The participation in or observation of any such inspections or testing by Purchaser or its designees (or any failure by Purchaser or its designees to participate in or observe such inspections and testing) shall not be construed as a waiver by Purchaser of any of its contractual or legal rights, nor shall it be construed as acceptance of the work by Purchaser.
- 6. 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.
- 7. INSURANCE AND CLAIMS.** This Section applies prior to Seller accessing the Project site. Seller shall obtain and maintain commercial general liability insurance covering bodily injuries (including death) and property damage and contractual liability in the amount of \$2,000,000 per occurrence, \$5,000,000 in the general aggregate and for products and completed operations. Seller shall name Purchaser, the project Owner, and all persons required to be indemnified under the Prime Contract as additional insured on an ongoing and completed operations basis with such insurance provided on a primary and non-contributory basis. 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 automobile liability insurance for the operation of any vehicle used in the performance of this PO covering property damage and bodily injuries (including death) in the amount of \$2,000,000 per occurrence or with greater limits as may be 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 or accessed, including USL&H and Jones Act coverages, if applicable, and employer's liability insurance in the amount of \$1,000,000 per occurrence. All such required insurance limits may be met by

the provision of any combination of primary and excess or umbrella coverages. Seller shall submit written proof of such insurance waiving subrogation against Purchaser, the project Owner, and all persons required by the Prime Contract on all coverages, unless prohibited by law. Seller shall also provide alternate employer endorsement to Purchaser on any applicable workers' compensation coverages where not prohibited by law. Seller shall give Purchaser thirty (30) days' prior written notice of cancellation of any such insurance and provide evidence of replacement coverage within ten (10) days of such and all insurances required shall be in force 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.

- 8. 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. Seller shall promptly pay its subcontractors and suppliers at lower tiers pursuant to Section 11.3.1.14 of the Prime Contract and in accordance with applicable law. Purchaser may, in its discretion, issue joint checks payable to Seller and any of its subcontractors, consultants, vendors, or suppliers for Items supplied and/or work performed under this PO and such payment shall be credited against the Total Price. In the event Purchaser fails to make timely payment for undisputed amounts and fails to cure the non-payment within 5 days after Owner provides Purchaser written notice of non-payment, then Owner may, in its sole discretion, make payments to the Seller and Purchaser by joint check in accordance with Section 11.3.1.12 of the Prime Contract.
- 9. FIXED PRICING.** All prices are for goods shipped F.O.B. Purchaser's discretion and represent the entire cost to Purchaser unless specifically contracted or stated otherwise in this PO. The individual price of each good and service specified in this contract is fixed and shall not be subject to any adjustments or changes due to fluctuations in market conditions, including but not limited to those caused by (a) tariffs, (b) duties, (c) taxes, (d) Force Majeure Events, (e) currency fluctuations, (f) changes in Seller's costs, or (g) any other factors. The Seller agrees to bear any and all costs associated with such fluctuations and shall not be entitled to price adjustments relating to such fluctuations. This fixed price shall remain in effect for the duration of this contract and is binding upon both parties. If Purchaser issues subsequent purchase orders for similar goods and services as set forth on this PO for the same or related project, Purchaser shall be entitled to the same or lower pricing for such goods and services. This price includes, without limitation, all charges for transportation, storage, engineering, labor, overhead and similar costs. Notwithstanding the foregoing, to the extent the Prime Contract provides relief to Purchaser with respect to items (a) through (d) above, for which Seller intends to assert a claim, Seller shall promptly, within two (2) calendar days, notify Purchaser in writing that it intends to request additional time or costs so that Purchaser may present Seller's request to the Owner. Such requests for additional time and/or costs shall be decided by the Owner, and if a time extension and/or additional costs are approved, it shall be authorized by Change Order.
- 10. 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, as applicable. 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 (\$17.75 per hour as of 1/1/2025) and the implementing regulations, requiring the payment on certain federal contracts of such minimum hourly wages (with annual increases thereafter).
- 11. 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 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 ".pdf" were an original.
- 12. 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 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.
- 13. VESSEL ACCESS.** If Seller requires access to Purchaser-provided vessels and/or floating equipment, the parties agree the following shall apply in addition to the Indemnity Agreement in Section 11 above: Seller shall be responsible for, and indemnify and hold harmless Purchaser of and from (including legal fees and costs of litigation), any loss, damage, expense, claim, liability, suit, fine and/or penalty applicable to the bodily injury, illness and/or death of any employee, subcontractor or invitee of Seller, howsoever caused and regardless of fault, and even if contributed to in whole or in part by the fault, negligence or strict liability of Purchaser, or the unseaworthiness of any vessel; and in furtherance of such indemnity Seller shall waive any immunity of suit and/or exclusivity of remedy afforded under any workers' compensation act or similar law. The remainder of the Indemnity Agreement shall remain in full force and effect.

If accessing Purchaser-provided vessels and floating equipment, in addition to the coverages required in Section 6 above Seller shall, at its expense, maintain the following insurances for the duration of this PO:

(a) marine general liability insurance or commercial general liability insurance, with any watercraft exclusion deleted in its entirety and including contractual liability coverage for Seller's obligations hereunder upon a standard ISO format, with limits of at least \$5,000,000 per occurrence; and

(b) workers compensation and employer's liability insurance upon all employees of Seller and the employees of its subcontractors and vendors, with coverage for applicable state act(s) and the Longshore Act, and with coverage for general maritime law and Jones Act exposures (Maritime Employers Liability), statutory limits for workers compensation and limits of not less than \$1,000,000 per occurrence for maritime employers liability.

The insurance identified at (a), above, shall be endorsed to name Purchaser as an insured and be primary and non-contributory as to any insurance of Purchaser and shall be endorsed to waive subrogation against Purchaser. The insurance identified in (b) above shall be endorsed to waive subrogation against Purchaser to the greatest extent legally permissible. Each insurance shall otherwise be upon forms and with underwriting security approved in advance by Purchaser. Seller shall provide Purchaser with certificate(s) of insurance evidencing the foregoing and complete copies of endorsements, as requested, prior to any access hereunder. In the event Seller fails to maintain an insurance as required, an insurance fails for any reason (including breach of warranty or policy condition), and/or an insurer otherwise refuses or is unable to pay, Seller shall be deemed a self-insurer with respect thereto, shall accept and pay claims which

would have otherwise been submitted to such insurance, and shall indemnify and hold Purchaser harmless (including legal fees and costs) of and from any loss, damage, expense, claim, liability and/or suit resulting from such failure.

- 14. TERMINATION.** If Seller refuses or fails to supply the Items required to maintain the schedule, refuses or fails to make prompt payment to lower-tier subcontractors or suppliers of labor, materials or services, fails to correct, replace, or re-execute faulty or defective materials furnished, disregards the law, ordinances, rules, regulations or orders of any public authority having jurisdiction, files for bankruptcy, or is in default or material breach of this PO, and fails to correct the default and maintain the corrected condition within not more than two (2) working days of receipt of written notice of the default or, for defaults not feasible of being cured within the timeframe contained in the written notice, Seller fails to commence steps and diligently pursue completion of the correction within such period, then Purchaser, without prejudice to any rights or remedies otherwise available to it, shall have the right to any one or both of the following remedies: (1) withhold payment of any monies due or to become due Seller pending corrective action to the extent required and to the satisfaction of Purchaser; and/or (2) terminate this PO with no liability to Purchaser. Additionally, upon ten (10) working days written notice to Seller, Purchaser may terminate this PO in whole or in part for Purchaser's convenience and/or at its option. Seller's remedy for such convenience or optional termination is limited to the following: (1) payment pursuant to the terms of this PO for all Items properly supplied prior to termination; (2) partial payment for Items ordered under this PO on the basis of the percent complete of such items at the time of termination; and (3) Seller's reasonable close-out costs as approved by Purchaser. In no event shall Seller be entitled to any compensation for loss of use, income, profits, anticipated profits, or unallocated overhead on work not performed.
- 15. CONFIDENTIALITY.** The terms of the Contract Documents and any and all information or materials obtained by Purchaser or Seller from Owner, Owner's Representative or any agents, representatives or affiliates of either of them in conjunction with or incidental to performing the work hereunder are confidential and shall not be disclosed by Seller or any of its respective affiliates, employees, or agents, to any third party without the Owner's prior written consent; provided that Seller may disclose information if required by applicable law, of a governmental authority as may be required to perform the work, or to Seller's employees, attorneys, consultants, insurers, and lower tier subcontractors who have a need to know such information and Seller shall ensure that its employees, attorneys, consultants, insurers and lower tier subcontractors maintain the confidentiality thereof on terms substantially similar to this Section.
- 16. 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 its costs and 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. For claims involving the Owner, Seller shall provide a certification that said claim and the costs and/or time requested by Seller is accurate and complete in accordance with Section 11.3.1.18 of the Prime Contract. It is understood and agreed that Owner is a third-party beneficiary of this PO and is entitled to enforce any rights thereunder for its benefit at any time. Notwithstanding, Seller is not in privity with Owner and shall not seek compensation directly from Owner on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise.
- 17. ASSIGNMENT.** Seller shall not, without the prior written consent of Purchaser, assign, transfer or sublet any portion or part of the work, nor assign any payment hereunder to others. When permitted by the terms of Prime Contract and this PO, and upon the request of Purchaser, Seller shall agree to assign or transfer any subcontract, purchase order or supply contract, and all benefits, interest, rights and causes of action arising under same, including warranties and guarantees, to Purchaser. In the case of such assignment, the Total Price shall be reduced by the value of the scope of work removed from this PO. Purchaser and/or Owner shall have the right to assign this PO in accordance with Sections 11.4 and 18.5.1 of the Prime Contract.
- 18. NO SOLICITATION.** Seller shall not solicit or engage the services of any person or persons in the employment of Owner for any services required, contemplated or performed under these Contract Documents. Seller may not assign to any former employee or agent of Owner who has joined Seller's firm any matter on which the former employees, while in the employ of Owner, had material or substantial involvement in the matter. Seller may request a waiver to permit the assignment of such matters to former owner personnel on a case-by-case basis.
- 19. AUDIT/RECORD RETENTION.** Seller shall maintain all files, records, and accounts for expenditures related to Seller's Work in compliance with all laws, orders, citations, rules, regulations, standards and statutes. Such files, records, and accounts for expenditures shall comply with the provision set forth in Section 11.3.1.10 of the Prime Contract.
- 20. SEVERABILITY.** If any provision of this PO 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.