

## **TERMS AND CONDITIONS – Fixed-Price Commercial Construction Contract**

- 1. GENERAL/ACCEPTANCE** - This purchase order (which term shall be deemed to include plans, specifications, regulations and other documents to the extent that any of the same are incorporated by reference) becomes the exclusive agreement between the parties for the Work subject to the terms and conditions herein. The term "Work" shall mean all plant, labor, materials, supplies, appliances, equipment, transportation or other things required to be furnished or performed by Contractor/Subcontractor in order to properly perform and fulfill the obligations and requirements of this purchase order. The term "Subcontractor" shall mean any person, supplier, distributor, retailer, vendor or firm which furnished supplies or services to or for Contractor or another subcontractor and, therefore, means subcontractor at any tier. The term "Buyer" as referenced throughout this purchase order means the entity name listed on this purchase order. The term "Contractor" as referenced throughout this purchase order means the party with whom Buyer is contracting and whose name and address appears on the face of the purchase order. Any of the following shall constitute Contractor's unqualified acceptance of this purchase order: (a) acknowledgment of this purchase order; (b) furnishing of any part of the Work under this purchase order; (c) acceptance of any payment for the Work or (d) commencement of performance under this purchase order. Unless otherwise stated in Buyer's specifications, the latest revision of applicable standards, specifications, or similar documents as of the date of this purchase order shall apply. Any additional or different terms proposed are objected to and are hereby rejected unless the same shall be accepted in writing by Buyer.
- 2. ASSIGNMENT, SUBCONTRACTING, AND PLACE OF PERFORMANCE** – (a) Neither this order nor any payments hereunder are assignable or transferable, in whole or in part, without Buyer's written approval, which approval will not be unreasonably withheld. Buyer shall be entitled to the right of set-off against any amounts payable under this purchase order;

(b) Neither the entirety nor any part of this purchase order may be further subcontracted without the prior written consent of Buyer. Buyer's consent of a subcontract shall not relieve Contractor of responsibility for the proper performance of the Work in accordance with all the requirements of this purchase order. Contractor shall at all times during the performance of this purchase order remain as responsible for the acts and omissions of all Subcontractors and their respective agents, representatives and employees, including acts of negligence, as it is for its own acts and those of its agents, representatives and employees;

(c) Work to be performed under this purchase order shall be primarily performed at such place or places designated in this purchase order and at such other place or places as may be necessary and incidental to the requirements of this purchase order. In no event shall performance of this purchase order occur outside the continental United States without prior notice to Buyer's Authorized Purchasing Representative and Buyer's written authorization. Contractor warrants that it has satisfied itself as to the nature and location of the Work and to the general and local conditions, particularly but not limited to those bearing upon, (1) transportation; (2) disposal; (3) handling and storage of materials; (3) availability of labor; (4) security requirements; (5) water; (6) electric power and other utilities; (7) roads; (8) conformation and condition of the ground in and around the contemplated construction area; (9) equipment and facilities needed preliminary to and during the performance of the Work and; (10) all other matters which can, in any way, affect the Work or the cost thereof under this purchase order. Any failure by Contractor to acquaint itself with all available information concerning these conditions shall not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing this purchase order;

(d) Contractor shall notify Buyer of any change in the place of performance with regard to the requirements of this purchase order. Such notification shall be made to the cognizant Buyer's Authorized Purchasing Representative not less than 30 days prior to the change to the place of performance.
- 3. BUYER'S AUTHORIZED REPRESENTATIVE** - (a) Buyer's Authorized Purchasing Representative is the individual authorized by Buyer's cognizant procurement organization to administer and/or execute the purchase order. Buyer's Authorized Purchasing Representative has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements as defined in the purchase order.

(b) Buyer's Facilities Operations Project Manager will be responsible for day-to-day oversight of Seller's performance at the location of the Work. Buyer's Facilities Operations Project Manager, engineering, technical personnel and other Buyer representatives may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Contractor's personnel concerning the Work being provided under this purchase order. No such action shall be deemed to be a change under the Changes clause of these terms and conditions and shall not be the basis for an equitable adjustment.
- 4. BUYER FURNISHED PROPERTY** - If in connection with the performance of this purchase order any property is furnished to Contractor by Buyer, Contractor shall assume the risk of, and be responsible for, any loss destruction of or damage to the property while in Contractor's possession or control, except to the extent that this purchase order, with the prior approval of Buyer, provides for relief of Contractor from such liability. In the absence of such approval Contractor shall return all such property in as good a condition as when received, except for reasonable wear and tear caused by the utilization of such property in accordance with the provisions of this purchase order. Title to all Buyer furnished property is and shall remain in Buyer. Buyer furnished property is provided to Contractor in an "as is" condition. Buyer shall not be liable to suit for breach of contract by reason of any delay in delivery of Buyer furnished property or delivery of such property in a condition not suitable for the intended use. Buyer shall have the right to enter Contractor's premises during normal working hours or the location of the Work at any time to inspect its property. Contractor shall maintain all Buyer furnished property at Contractor's expense. Contractor shall institute or have in place a property control system approved by Buyer.
- 5. DISCREPANCIES** - If Contractor believes there are or may be any errors, omissions or inconsistencies in the provisions and exhibits of this purchase order or if Contractor has any doubt as to the meaning thereof, Contractor shall immediately submit the matter to Buyer for written clarification. Any Work performed before receipt of such clarification shall be at Contractor's risk and expense. If any clarification is needed, Buyer shall clarify the same by issuing a written clarification pursuant to the "Changes" clause. However, notwithstanding the provisions of said clause, there shall be no increase in the purchase order price or extension of the time for completion on account of any misdescription or omissions of details of the Work which are clearly necessary to carry out the intent of the documents or which are customarily performed or furnished by Contractors. Such misdescribed or omitted details shall be performed or furnished by Contractor without extra compensation as if correctly and fully set forth in the documents.

Contractor shall promptly and before such conditions are disturbed, notify Buyer in writing of:

  - (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this purchase order, or;
  - (2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this purchase order.

Contractor shall keep at the location of the Work a copy of the drawings and specifications required by this purchase order and shall at all times provide Buyer access thereto. Anything mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In any case of discrepancy in the figures, drawings or specifications, the matter shall be immediately submitted, in writing, to the designated Buyer's Authorized Purchasing Representative

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and the Facilities Operation Project Manager without whose decision said discrepancy shall not be resolved by Contractor, save only at its own risk and expense. Buyer's Authorized Purchasing Representative shall resolve such discrepancy in writing, including a clarifying revision to a drawing or specification, as applicable. Buyer may furnish from time to time such other detail drawings, specifications and information as it may consider necessary. All drawings, plans, specifications, data and other information furnished by Buyer to Contractor, or developed by Contractor in the performance of this purchase order shall remain or become the property of Buyer, and Contractor shall deliver the original and all copies of all such documents to Buyer upon completion and acceptance or termination of the Work.

- 6. CHANGES** – (a) Buyer's Authorized Purchasing Representative may at any time, by written order, without notice to any surety, make changes or additions within the general scope of this purchase order in any one or more of the following: (1) drawings, designs, Statement of Work or specifications; (2) method or manner of performance of the Work; (3); (4) Directing acceleration in the performance of the Work; (5) delivery schedule, where reasonable, and (6) the amount of Buyer furnished property, facilities, equipment, services on site.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of this purchase order, whether changed or not changed by any such written order, Contractor shall notify Buyer in writing immediately and an appropriate equitable adjustment will be made in the price or time of performance, or both, by written modification of this purchase order. Any claim by Contractor for such adjustment must be asserted within fifteen (15) days, or such other period as may be agreed in writing by the parties, after Contractor's receipt of notice of the change and shall include sufficient detail for analysis of the labor and material required for each task, activity or requirement included in the change. If Buyer and Contractor are unable to agree upon an equitable adjustment in the event of any change directed by Buyer, the matter will be resolved in accordance with the Disputes provision of these terms and conditions. Pending resolution of any such adjustment, Contractor will diligently pursue the performance of the order as changed. Contractor hereby acknowledges any such direction provided by anyone other than Buyer's Authorized Representative, except in the case of emergencies endangering the safety of person or property, is of no force and effect and Contractor accepts all risks of accepting and/or otherwise proceeding with such unauthorized direction.

(c) If Contractor receives any direction from a regulatory third party that would require a change to this purchase order, Contractor shall immediately notify Buyer's Authorized Purchasing Representative and the Facilities Operations Project Manager of the directed requirement, detailing required changes before proceeding with such change

- 7. CHOICE OF LAW** - Irrespective of the place of performance, this purchase order will be construed and interpreted according to the laws of the State of Maryland not including its rules with respect to conflict of laws.
- 8. COMPLIANCE WITH LAWS AND REGULATIONS** - (a) Contractor and Subcontractors at any tier shall comply with any applicable laws, Executive Orders, or regulations (including but not limited to local or municipal administration regulations or requirements); (b) At all times, Contractor and Subcontractors at any tier shall comply with all applicable local, state, and federal Environmental Health and Safety (EHS) ordinances, statutes, and regulations, which includes, but is not limited to, all rules, regulations and orders established by the Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and Department of Transportation (DOT). Contractor shall comply at all times with Buyer EHS policies and procedures and site-specific EHS requirements and emergency procedures; (c) Contractor will obtain any necessary licenses, registrations, or certifications required by local ordinance or state or federal statute or regulation for the Work

performed. Contractor will ensure that Contractor employees and Subcontractors performing Work possess the required individual licenses, registrations, or certifications based on the Work to be performed and are adequately trained for the Work being performed; including relevant EHS requirements and any EHS training that is required by local, state or federal regulations or any special requirements identified by Buyer. (c) Contractor agrees to indemnify Buyer against any loss, cost, liability, or damage by reason of Contractor's violation of any applicable law, Executive Order, regulation, or local or municipal requirement.

- 9. DEFAULT OF CONTRACTOR** - In the event Contractor (a) Becomes bankrupt or otherwise insolvent, (b) Commences or becomes the object of any proceeding involving Contractor's insolvency, bankruptcy, reorganization, dissolution, liquidation, or any similar proceeding for the relief of financially distressed debtors, and such proceeding is not dismissed within sixty (60) days, or (c) Fails in any material way to perform any of Contractor's obligations under this purchase order, or so fails to make progress as to endanger such performance and does not cure such failure within ten (10) days of receipt of Buyer's notice of such failure, then Buyer may, at its sole election, by notice to Contractor, terminate this purchase order, in whole or in part, for default. Contractor shall pay to Buyer any excess costs for Buyer's procurement of such supplies, goods, or services associated with the terminated Work.

If liquidated damages are provided for in this purchase order and if Buyer so cancels Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until such reasonable time as may be required for final completion of the Work together with any increased costs occasioned by Buyer in completing the Work.

If liquidated damages are provided for in this purchase order and if Buyer elects not to cancel Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until the Work is completed or accepted.

The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law under this purchase order or otherwise.

- 10. DEFECTIVE WORK** - Buyer, notwithstanding any prior acceptance, at its option, may reject, or require prompt correction (in place or elsewhere), of any Work which is defective in material or workmanship or otherwise fail to meet the requirements of this purchase order. All Work furnished under this purchase order shall be subject to inspection and Contractor shall be given notice of any defects, other than latent defects within a reasonable time. Buyer may, in addition to any rights it may have by law, require Contractor to direct correction of any defects in place or, with authorization by Contractor, correct them, and the expense of any such action, including any transportation, if any, shall be borne by Contractor. Buyer may recover by set off or otherwise any and all costs, expenses and damages paid, incurred or suffered as a result of or relating to holding, returning, replacing, correcting or rejecting defective or nonconforming Work. If Contractor fails to promptly replace or correct such Work, Buyer may replace or correct such Work at the expense of Contractor, including any excess cost or Buyer may terminate this purchase order or any portion thereof pursuant to the Default of Contractor clause of these terms and conditions. Contractor shall not again tender rejected or corrected Work unless Contractor discloses the former tender and rejection or requirement of correction. Contractor shall immediately notify Buyer upon discovery of any actual or potential nonconformance affecting the Work as contemplated by this purchase order.

Buyer at any time before acceptance of the entire Work can request inspection of Work already completed, by removing or tearing out same, Contractor shall, on request, promptly furnish all necessary facilities, labor and material to accomplish such inspection. If such inspected Work is found to be defective or nonconforming in any material respect due to the fault of Contractor or his Subcontractors, Contractor shall bear all costs of such examination and of

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satisfactory reconstruction. If, however, such Work is found to meet the requirements of the purchase order, an equitable adjustment shall be made in the purchase order pursuant to the Changes clause of these terms and conditions.

- 11. DELIVERY** - (a) The Parties expressly agree that time is and shall remain a material element of this purchase order and no acts of Buyer, including without limitation, modifications to this purchase order or acceptance of late deliveries, shall constitute a waiver of this clause.

(b) Contractor will deliver acceptable Work in strict conformity to the drawings, specifications, and other provisions and requirements within the delivery schedule and at the price set forth in this purchase order. No deviation from plans, drawings or specifications is permitted unless authorized in writing by Buyer's Authorized Purchasing Representative or the Facilities Operations Project Manager pursuant to the Changes clause of these terms and conditions. Contractor is responsible to ensure all necessary equipment and materials necessary to complete this purchase order within the schedule are ordered and scheduled for delivery to meet the schedule, but shall not make material or production commitments in advance of such time as Contractor reasonably believes necessary to meet the schedule without prior written approval by Buyer. Representatives of Buyer, or any governmental authority or its authorized representatives or both shall at all reasonable times have access to the location of the Work for the purpose of assuring delivery in accordance with the schedule or compliance with requirements. Contractor shall schedule all Work required under this purchase order to avoid interruption of normal Buyer operations and shall coordinate with Buyer any anticipated interruption to Buyer's normal operations.

(c) Due to the critical nature of the delivery schedule of this purchase order, Contractor is required to provide Buyer with a complete construction schedule in Microsoft Project® format, to be approved by Buyer, indicating critical path items and providing detailed task progress, completion and due dates. Contractor is responsible for updating the construction schedule in Microsoft Project® format throughout the period of performance of this purchase order and shall provide Buyer written updates as requested by Buyer. Contractor shall perform the Work in accordance with the approved construction schedule. Buyer reserves the right to suspend Work due to non-submission of a schedule or required updates.

(d) If at any time during the performance of this purchase order, Contractor becomes aware that it will not meet any of the critical path schedules or the scheduled completion date of the Work for any reasons, including labor disputes, Contractor shall promptly notify Buyer in writing as soon as practicable after knowledge of the delay describing the reasons for the delay and the estimated time or duration of such delay. In no event shall such notice of delay to Buyer occur beyond 15 days from the date Contractor became aware of the delay. Contractor's notification of delay to Buyer shall not in any way relieve Contractor of any liability for breach of contract by reason of any delay in performance.

(e) If Contractor refuses or fails to prosecute any part of the Work with such diligence as will ensure its completion within the time specified in this purchase order, as the same may be modified in writing from time to time, or otherwise fails to perform any of its obligations under this purchase order, Buyer may, at any time after three (3) days' written notice to Contractor, or in an emergency endangering life or property, after such notice, if any, as may be reasonable under the circumstances, without prejudice to any other rights or remedies Buyer may have, make good such deficiencies by such means as Buyer may deem expedient and charge the cost thereof to Contractor.

(f) If Contractor is unable to meet the required delivery schedule for any reason, other than a change directed by Buyer, Buyer shall have the option to: (1) terminate this purchase order; or (2) fill such purchase order or any portion thereof, from sources other than

Contractor and to reduce Contractor's purchase order accordingly at no increase in price, without any penalty to Buyer. Alternatively, Buyer may require Contractor to provide consideration for the late delivery. This condition shall not limit Buyer's rights or remedies under the Default of Contractor clause contained herein

- 12. STOP WORK ORDER** - Buyer may, by written notice to Contractor, order Contractor to suspend, delay or interrupt all or any part of the Work contemplated by this purchase order for such period of time as may be appropriate for the convenience of Buyer. Upon receipt of such an order, Seller will immediately take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the order during the period of Work stoppage. Within 90 days of issuance of a Stop Work Notice under this purchase order, Buyer shall either; 1) cancel the stop work order, or; 2) terminate the Work covered by the order pursuant to the Termination clause of these terms and conditions. In the case of cancellation of the stop work order, Buyer shall make an equitable adjustment in the delivery schedule to compensate for the stop work period. If the price of the Work to be performed is affected by the issuance of the stop work order, Contractor shall provide a written notice to Buyer under the Changes clause of these terms and conditions.

However, no adjustment shall be made for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of Contractor or its Subcontractors, or for which an equitable adjustment is provided for or excluded under any other provision of this purchase order

- 13. DISPUTES** - Any dispute arising under this purchase order which is not settled by agreement of the parties will be litigated in the state or federal courts of the State of Maryland. Pending any decision, appeal or judgment in such proceedings, or the settlement of any dispute arising under this purchase order, Contractor shall proceed diligently with the performance of this purchase order unless otherwise agreed between Buyer and Contractor.

- 14. FEDERAL, STATE AND LOCAL TAXES** - Except as may be otherwise provided in this purchase order, the price includes all applicable federal, state and local taxes and duties.

- 15. NOTICE TO BUYER OF POTENTIAL DELAYS** - (a) Whenever Seller has knowledge that any occurrence is delaying or threatens to delay the timely performance of this purchase order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer. Such occurrences shall include, but not be limited to: (1) actual or potential labor disputes or strikes; (2) fires, floods, or unusually severe weather; (3) acts of nature; (4) acts of the Government in either its sovereign or contractual capacity, and any other cause for delay. Neither receipt of such notice by Buyer nor any provision of these terms and conditions will be deemed to be a waiver by Buyer of any of its rights under any purchase order, these terms and conditions, at law or otherwise.

(b) Seller agrees to insert this clause, including this Subparagraph (b), in any purchase order or subcontract hereunder.

- 16. INDEMNITY, INSURANCE AND BONDS** - (a) Contractor will defend, indemnify and hold harmless Buyer and its affiliates, and their officers, agents, employees, successors and assigns, against any claims, loss, damage, causes of action or expense, including, without limitation, payment of direct, special, incidental and consequential damages, and expenses of defending claims, including attorneys' fees, for property loss and/or damage, and personal injury and/or death, which may be sustained by third parties, including Contractor's Subcontractors, and/or by Buyer, its agents, employees or Subcontractors, at any tier, which results from Contractor's, or its Subcontractors, performance, nonperformance, act or omission, including negligence, of this purchase order and from all laborer's and mechanic's liens or any encumbrance against the real property upon which the Work is being performed arising out of the service, labor or materials furnished under this purchase order, except for claims resulting from the sole negligence of Buyer. Buyer will inform Contractor of any claim, demand or suit asserted or

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instituted against it and, to the extent of Buyer's ability to do so, permit Contractor to defend the same or make settlement in respect thereof.

(b) Within five (5) days of issuance of this purchase order, Contractor shall furnish evidence of insurance reasonably satisfactory to Buyer covering the liabilities and indemnification provided above but no acceptance of such evidence by Buyer shall be deemed a waiver or release of such liabilities or duty to indemnify. Contractor will at all times maintain with reputable insurance companies; 1) Comprehensive General Liability insurance (including coverage for any liability under any Buyer purchase order and these terms and conditions) in the minimum amount of \$2.0 million, or such other minimum amount specified in the relevant purchase order; 2) Commercial Automobile liability insurance in the minimum amount of \$1 million; and 3) Employer's liability with a limit of at least \$1 million per accident or disease. At Buyer's request, Contractor will name Buyer as an additional insured under such policy, and will provide to Buyer a certificate of such insurance providing for thirty (30) days' prior written notice to Buyer of cancellation or material change. Contractor and its Subcontractors will maintain workers' compensation insurance sufficient to cover all of its general and special employees engaged in Work pursuant to this purchase order and insurance against liability for personal injury or death or destruction to property arising out of Work in fulfillment of this purchase order, and will provide prompt evidence to Buyer of such coverage upon Buyer's request. Contractor may be required to provide evidence of Builder's Risk insurance as appropriate to cover the Work in the course of performance.

(c) Buyer shall have the right to require Contractor to furnish bonds covering diligent performance of the Work contemplated by this purchase order and payment of obligations arising thereunder as required by law, or identified in writing as a requirement of this purchase order. If a bond(s) is required, no Work shall begin until sufficient evidence of the bond(s) is furnished to Buyer's Authorized Purchasing Representative.

If a bond(s) is required for this purchase order, the following provisions shall apply:

(1) any and all such bonds shall be in a form and amount, and shall have a surety or sureties, acceptable to Buyer and any governmental authority having jurisdiction; (2) premiums for any such bond required by law or requested by Buyer shall be deemed to be included in the contract price, and no additional compensation shall be payable to Contractor with respect to such bond(s); (3) no change order, extension of time for completion of Work, failure to enforce any rights arising under the contract, or other act of forbearance of Buyer shall, unless specifically otherwise agreed by Buyer, operate to release or discharge any surety or sureties under any bond held pursuant to this purchase order; (4) failure to deliver an acceptable bond(s) within the time allocated by Buyer shall constitute a material breach of this purchase order and entitle Buyer to: (i) terminate this purchase order and prohibit Contractor's right to proceed with the Work and; (ii) recover from Contractor any damages resulting from such breach; (5) if any surety on any bond(s) becomes unacceptable to Buyer or if the purchase order price is substantially increased pursuant to a valid change issued in writing by Buyer under the Changes clause of these terms and conditions after such bond(s) is delivered which requires a higher level of surety, Contractor shall promptly deliver such acceptable additional bond as Buyer may require.

- 17. CONSTRUCTION SITE MAINTENANCE AND UPKEEP** – (a) Maintenance of Site - At all times Contractor shall use suitable precautions to prevent damage to Buyer property or the property of third parties throughout the period of performance of this purchase order. If any such property is damaged by any negligent act or omission of Contractor or any of its Subcontractors of any tier or any of their respective agents or employees in connection with the performance of this purchase order, Contractor shall, at no cost to Buyer, promptly and equitably reimburse Buyer or third party, as applicable, for such damage or repair or otherwise make good the

same to Buyer's satisfaction. If Contractor fails to do so, Buyer may proceed to repair or have repaired, or replace the damaged property and charge to or otherwise recover from Contractor the cost thereof. This clause shall not be construed to relieve Contractor of, or limit, Contractor's liability under any other provision of this purchase order for loss or destruction of or damage to any property.

Contractor shall carefully protect all land monuments and property marks from disturbance and damage and shall not move the same without the prior written consent of Buyer.

At all times Contractor shall adequately protect from damage or deterioration all Work performed and all materials, equipment and other items incorporated or to be incorporated into the end product. All reasonable requests of Buyer to enclose or otherwise protect such property shall be complied with promptly at no cost to Buyer. Contractor and its Subcontractors shall keep its Work and storage areas cleared of debris at all times;

(b) Storage of Materials - Contractor shall confine all its operations, including storage, vehicle parking and the movement of materials, equipment and workmen to the areas specified herein, or approved by Buyer; provided, however, that at Buyer's option, premises adjacent to the construction site may be made available for use by Contractor without cost whenever such use will not interfere with other use or purposes of Buyer and Buyer gives its written consent. Materials and equipment shall be neatly and safely stored with the least possible interference to existing traffic lanes. Temporary buildings may be erected if approved by Buyer in writing.

(c) Salvage and Clean Up - Unless otherwise provided in this purchase order, all material excavated, demolished or removed by Contractor from construction site in the course of performance of this purchase order and not required for incorporation in the Work (such as waste, rubble and salvable materials) shall be stored, destroyed and/or removed from the location of the Work or otherwise disposed of by Contractor in a safe, proper and workmanlike manner or as specifically directed by Buyer in the purchase order. Upon completion of the Work and before final acceptance, Contractor shall, unless otherwise specified herein or authorized by Buyer, remove from the site all construction equipment, debris, surplus materials and temporary construction, clean both sides of all glass installed and leave the premises in a broom-clean neat and workmanlike condition. Contractor shall follow all environmental, health and safety, and hazardous material transportation regulation, local ordinance or Buyer requirements in such removal and disposal. Contractor will use appropriate safety precautions and practices to eliminate, or minimize to the extent practical, the generation of vapors, mist, fumes, odors, and/or dusts or particulates to which Buyer's employees may be exposed. Buyer approval is required before starting any Work other than routine cleaning and housekeeping that will generate airborne fumes, mists, chemical vapors, odors, or dust or particulates in occupied Buyer locations.

(d) Work of Others - Buyer may undertake or award other contracts for additional work to be performed in connection with or in or about the Work under this purchase order. Contractor shall cooperate with Buyer and its other contractors and coordinate Contractor's Work with the third party contractors of Buyer so that all work may be promptly and properly performed without undue interference or delay. Contractor shall afford Buyer and its other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their respective work, including storage space, access, use of hoisting equipment and Contractor's construction utilities.

(e) Utilities - Unless otherwise provided in this purchase order, Contractor shall furnish all the water and electric current and other utilities as may be required for the performance of this purchase order. At no additional expense to Buyer, Contractor shall install and maintain any necessary temporary electrical and water supply connections, facilities and piping, but only at such locations and in such workmanlike manner as may be authorized in writing by Buyer.

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Before final acceptance, all temporary connections, facilities and piping installed by Contractor shall be removed in a workmanlike manner, to the satisfaction of Buyer. If Contractor requires the temporary shut-off of any utility, (which term as used in this clause and the following clause shall include all supply, disposal, distribution and communication systems, and all similar facilities) Contractor shall notify Buyer at least twenty-four (24) hours in advance of the time Contractor requires the shut-off. Contractor shall then perform the Work requiring the shut-off on such days and at such hours as Buyer may direct. Regardless of the days or hours fixed by Buyer, no extra compensation will be paid for such Work.

(f) Underground utilities - Underground utilities which are known by Buyer to exist are shown in their approximate locations only because exact locations are unknown to Buyer. Contractor shall excavate with utmost care so as not to cause damage or interruption of service. If any utility shown on the drawings is damaged as a result of any failure of Contractor or any of its Subcontractors of any tier or any of their respective agents, representatives or employees to exercise utmost care, Contractor shall be solely liable and shall indemnify and hold Buyer harmless from any claims, suits, damages or losses including any costs associated with repairing such utility. If an existing utility requires relocation and such relocation is not specified in the purchase order, Buyer shall issue a written change pursuant to the Changes clause to provide for the relocation.

(g) Fire Protection - Contractor shall provide adequate fire extinguishing equipment including, as a minimum, portable extinguishers suitable for the types of hazards involved and any other extinguishers specified herein or required by Buyer. Welding, cutting, grinding, and other open flame operations shall be performed only after obtaining a permit, (daily permits are required), and only under conditions approved by Buyer. Smoking shall be confined to areas free from fire hazards. Any smoking regulations in effect (i.e. designated smoking areas) shall be strictly observed.

(h) Environmental Health and Safety (EHS) - Contractor shall, unless otherwise specified herein, follow all applicable EHS requirements, whether imposed by law, regulation, local ordinance or Buyer to include but not be limited to; (1) Provide all equipment, including personal protective equipment (PPE) necessary to safely perform the Work in this contract. Contractor will ensure that PPE is appropriate for the task, is in good condition, and is used correctly by Contractor employees; (2) Provide Buyer a list of all chemical and/or hazardous materials that will be brought onto Buyer's property or used to perform Work under this purchase order. Material Safety Data Sheets (MSDSs) are to be provided upon request by Buyer. Only chemicals and/or hazardous materials approved in advance by Buyer may be brought onto Buyer's property. Contractor shall ensure all containers of chemical and/or hazardous materials brought onto Buyer property are conspicuously labeled as to their contents and hazards, and Contractors name; (3) Contractor will notify Buyer's Authorized Purchasing Representative and Facilities Operations Project Manager within eight (8) hours of all accidents or injuries involving Contractor employees occurring on Buyer's property and the receipt of all notices of violation or other regulatory citations relevant to Work performed on Buyer's property. Contractor hereby indemnifies and holds Buyer harmless from and against any noncompliance by Contractor with any applicable local, state, or federal EHS ordinance, statute, or regulation; (4) Contractors shall comply with the following additional requirements while on Buyer's property: (i) Perform immediate clean up of all spills and notify Buyer's Authorized Representative or Facilities Operations Project Manager, or both; (ii) Ensure no flammable chemicals/materials are left on Buyer's properties; (iii) Maintain Work areas in a clean condition and free of clutter and debris. (iii) Keep all functional electrical panels, emergency showers/eyewash, and fire exits clear from obstructions at all times and do not block, remove or disable fire alarms, intercoms, or sprinklers without approval from Buyer's Authorized Purchasing Representative; (iv) Barricade or identify any trip, slip and fall hazards clearly using warning signs, cones, or other means such that the hazard is readily apparent to

the average person; (v) De-energize and secure any powered equipment and compressed gas cylinders when not in use and these items must not be used or left unattended in areas other than in the immediate vicinity where the Work is being performed; (vi) Follow appropriate lock-out/tag-out procedures for electrical, pneumatic, chemical, hydraulic, and mechanical equipment; (vii) Obtain approval from Buyer prior to the entry into any posted or OSHA defined permit required confined space.

18. **LABOR** - (a) Contractor is responsible to provide sufficient workforce to accomplish the schedule of this purchase order with a skill set commensurate with the tasks to be performed. Contractor shall furnish sufficient equipment, and shall work such hours, including night shift, overtime operations, weekends and holiday work, as may be necessary to ensure the prosecution of the Work in accordance with the approved construction schedule. If Contractor falls behind such schedule, Contractor shall take such steps as may be necessary to improve its progress and Buyer may require Contractor to increase the number of shifts, overtime operations, days of work, including Saturdays, Sundays and holidays, and the amount of equipment, all without additional cost to Buyer. This is in addition to Buyer's other remedies.

Contractor is responsible to verify the validity of any licenses or special qualifications for any agents, employees or Subcontractors performing tasks requiring such certifications. Buyer may, by a written order signed by Buyer's Authorized Purchasing Representative, require Contractor to remove from the Work site any employee, agent or representative of Contractor or any of its Subcontractors for any reason;

(b) Contractor shall appoint and employ throughout the performance of the Work a competent superintendent who shall be acceptable to Buyer and who shall have complete oversight of the Work on behalf of Contractor and manage day-to-day performance of the Work. Such superintendent shall not be changed without the consent of Buyer unless the individual serving in that capacity leaves Contractor's employ or becomes unable to serve due to circumstances beyond the control of Contractor. Contractor shall promptly advise Buyer in writing of the name, address, and telephone number of such superintendent and of any substitute superintendent or superintendents who may from time to time be appointed in his place. Contractor shall, notwithstanding any approval by Buyer, remain as fully responsible for the acts and omissions of all subcontracts and their respective agents and employees as it is for its own acts and those of its agents and employee.

(c) Contractor must obtain a pass (or suitable badge) from Buyer for each person who is to perform Work in any restricted area in performance of this purchase order. If any person does not qualify to receive a pass or whose pass is cancelled pursuant to Buyer's standard badge requirements will not be permitted to Work in such area. Contractor may obtain such passes by submitting the required information to Buyer's Authorized Purchasing Representative reasonably in advance of the time passes are needed. Denial by Buyer of a pass to an individual does not relieve Contractor from any obligations of performance of this purchase order.

(d) Whenever Contractor has knowledge that any actual or potential labor dispute may delay the schedule of this purchase order, Contractor shall immediately notify and submit all relevant information to Buyer. Contractor shall include the substance of this subsection (d) in all subcontracts under this purchase order, including lower-tier subcontracts.

(e) Contractor shall be responsible for the prompt payment of all persons who perform Work (including but not limited to water, gas, power, light, heat, oil, gasoline, telephone service and rental of equipment) used or to be used in the performance of this purchase order.

19. **AUDIT** - Unless otherwise provided for in this purchase order or applicable statute, during the performance of this purchase order and for a period of four (4) years after completion or termination,

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Buyer shall have the right to audit such records of Contractor or Subcontractors to ensure compliance with the terms and conditions of this purchase order. Such books and records shall be made available at Buyer's facility in the United States, without charge, for verification, copying, audit and inspection by Buyer or its representatives, including authorized third-party auditors. Any such audit shall be conducted during normal business hours upon reasonable prior written notice to Contractor/Subcontractor. Contractor or Subcontractor, as applicable, shall provide reasonable assistance necessary to enable Buyer or its representatives to conduct such audit and shall not be entitled to charge Buyer for any such assistance. In the event such audit reveals Contractor or Subcontractor has billed Buyer in excess of the correct amount to be billed, Supplier shall promptly pay to Buyer the amounts over paid.

For purposes of adhering to the requirements of this audit clause, Contractor and Subcontractors shall retain all documents, notes, records and all other documentation with regard to the Work, including records of hours worked by employees of Contractor or Subcontractors, for a period of four (4) years after completion or termination of such Work provided under this purchase order.

**20. INSPECTION AND FINAL ACCEPTANCE** – (a) Buyer may inspect any and all Work under this purchase order at all times and places, during manufacture and otherwise, including Subcontractors. Buyer's inspection may, in its sole discretion, include physical, visual and/or mechanical review, as well as any documentation necessary to substantiate the meeting of quality requirements or specific requirements set forth in the purchase order. If inspection and test are made on Contractor's or any Subcontractor's premises, reasonable facilities and assistance for the safety and convenience of the inspectors in performing their duties shall be provided without additional cost to Buyer. Inspections and tests by Buyer shall be performed in such manner as not to delay the Work unduly. Buyer may charge to Contractor or its Subcontractors any additional cost of inspection and test when Work is not ready at the time such inspection and test is requested by Contractor or its Subcontractor. In the case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test, if applicable. If the specifications call for a portion of the Work to be covered or buried (as in the case of certain conduit or pipes) Contractor shall, at no cost to Buyer, uncover or remove such portion of the Work as may be necessary if Contractor covered or buried the Work prior to Buyer's having fully inspected and approved the Work.

(b) The inspection, review or approval by Buyer or a third party inspector acting on behalf of a municipality of any Work, or of any drawing, design, or other document, will not be deemed to relieve Contractor of any of its obligations under any purchase order, or to constitute a waiver of any defects or nonconformities. The acceptance by Buyer of any Work under any purchase order will not be deemed to limit or affect any warranty or right of indemnity granted by Contractor under such purchase order, these terms and conditions or otherwise.

(c) Except as otherwise agreed in writing, all Work furnished under this purchase order shall be subject to final inspection and acceptance by Buyer notwithstanding any previous acceptance, the earlier passing of title to Buyer, any prior payment by Buyer, or any prior inspection of any type. Contractor shall maintain an inspection and quality control system acceptable to Buyer and perform such inspections as will assure the Work will be free from defects and otherwise conform to the purchase order requirements. Contractor shall make available to Buyer all records of inspections conducted in performance of this purchase order.

(d) Contractor shall: (1) be responsible for notifying the appropriate city, county or other inspection agency whenever the Work is progressed to a point where inspection is required under this purchase order or any applicable law or ordinance; (2) have the Work ready for inspection upon the arrival of such inspectors, and; (3) notify Buyer in advance, when possible, of their anticipated arrival.

(e) Buyer may, pursuant to mutual written agreement of the parties, take possession of or use any completed or partially completed part of the construction site at any time prior to final completion, inspection or acceptance. Unless otherwise agreed in writing, such possession or use shall not be deemed an acceptance of any part of the Work nor relieve Contractor of the risk of loss. If such possession or use delays the progress of the Work or causes additional expense to Contractor, Contractor shall have the right to request an equitable adjustment pursuant to the Changes clause; provided, however, if Contractor fails to complete the Work within the time specified in this purchase order, Buyer may take possession of or use all or any part of the construction site without payment of additional compensation to Contractor or extension of time for completion of such possession or use.

(f) Unless otherwise provided in this purchase order, final acceptance by Buyer shall be made as promptly as practicable after completion and inspection of all Work required by this purchase order. Final acceptance shall be conclusive except with regard to latent defects, fraud or such gross mistakes as may amount to fraud, and except for any rights Buyer maintains under the Warranty clause or under any other warranty or guarantee made or given in connection with this purchase order.

(g) Final acceptance may only occur after the following minimum actions are deemed complete by Buyer and any other requirements specified in the purchase order: 1) For each piece of equipment installed in the Work, Contractor shall, as a condition precedent to final payment, provide Buyer with the working drawings, operating instructions, performance curves and data, and maintenance and parts manuals of any nonstandard tools required in the normal maintenance, adjustment, use and operation of the equipment or structure. For small commercial standard equipment the information and tools to be provided shall be limited to that normally available from the manufacturer. This provision does not apply to Buyer furnished equipment; 2) Upon completion of all Work under this purchase order, Contractor shall certify in writing to Buyer, with sufficient evidence, that all payments and claims for which Contractor is responsible, including payments and claims of Subcontractors, have been made or settled. Such certification shall include a release and waiver by Contractor of all liens and rights of lien and all claims against the property associated with the Work and Buyer; 3) Promptly after completion of all Work, and as a condition precedent to final payment, Contractor shall deliver to Buyer all data necessary to revise the drawings and specifications to conform to the "as-built" condition. Contractor shall also deliver survey data establishing the location and elevation, to any accuracy of 0.1 foot horizontally and vertically, of all underground utilities installed under this purchase order or encountered by Contractor in performing the Work; 4) Buyer's Project Manager, and other designated authorized representatives as Buyer deems appropriate, shall conduct a final walk through of the Work location with Contractor to review all Work performed. Contractor shall make available any Subcontractor Buyer requests for the final walk through. During the final walk through, the parties will create a punch list of items identifying Work required by Contractor to meet the requirements of this purchase order. Contractor must complete the punch list items, or come to an agreement with Buyer as to an equitable adjustment for any items not completed, to qualify the Work for final acceptance. Nothing in this section limits Buyer's inspection rights throughout the period of performance of this purchase order. Punch list items do not constitute additional Work as contemplated by the Changes clause. If Contractor believes any item on the punch list constitutes a change, Contractor shall notify Buyer in writing pursuant to the Changes clause of these terms and conditions.

(h) Contractor shall bear the risk of any loss or destruction of or damage to the Work performed under this purchase order or any materials, equipment or other items incorporated or to be incorporated therein until the completion and final acceptance by Buyer of the Work.

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- 21. INTELLECTUAL PROPERTY INDEMNITY** - Contractor shall indemnify Buyer, and/or Buyer's customer, and their respective officers, agents and employees against liability, including costs, for infringement of any patent, copyright, trademark or other intellectual property arising out of the performance of the Work under this purchase order or out of the use or disposal by, or for the account of, Buyer, and/or Buyer's customer, of such Work. The foregoing indemnity shall not apply unless Contractor shall have been informed as soon as practicable by Buyer and/or Buyer's customer of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules or regulations to participate in the defense thereof. Such indemnity also shall not apply if: (a) the infringement results from compliance with specific written instructions of Buyer directing a change in the Work to be delivered or in the materials or equipment to be used, or directing a manner of performance of this purchase order not normally used by Contractor, or (b) the infringement results from an addition to, or change in, the Work furnished made subsequent to delivery or performance by Contractor, or (c) the claimed infringement is settled without the consent of Contractor, unless required by final decree of a court of competent jurisdiction.
- 22. INVOICE AND PAYMENT** - (a) Contractor shall submit monthly invoices pursuant to Buyer's instructions contained in this purchase order. Invoices shall only be for costs incurred and shall not include advanced payments unless otherwise provided for in this purchase order. Payment due dates will be computed from the date of receipt of a correct invoice. Each invoice shall contain Buyer's purchase order number and provide sufficient detail of cost allocation and description of labor and material such that Buyer may readily ascertain as to which portion of the Work the invoice pertains. Buyer may request additional information and Contractor shall provide additional documentation (e.g. receipts) as requested by Buyer to substantiate the invoiced costs.
- (b) Buyer shall retain 10% of each monthly payment (unless otherwise specified by State or local law) due Contractor and in no event shall Buyer pay Contractor more than 90% of the total contract price (unless otherwise specified by State or local law), with the balance of the contract price to be paid upon completion of all punch list items, the receipt of a release of all liens, and final acceptance of all Work by Buyer.
- (c) If Contractor or any of its Subcontractors fail to pay all persons or Subcontractors, as required under this purchase order, Buyer may, at any time after five (5) days' written notice to Contractor, pay persons or Subcontractors directly and deduct such payments from any amounts due Contractor under this purchase order.
- (d) Buyer may set off against any amounts due under Contractor's invoices: (1) any damages resulting from Contractor's default under or breach of any contract (including any purchase order and these terms and conditions); (2) any amount owing from Contractor or lower-tier Subcontractors to Buyer; or (3) any amount for actual or prospective loss of defective Work or nonconforming requirements, or; (4) any amount for anticipated payment of any lien, claim, suit or action Contractor has not satisfied that creates an obligation or other encumbrance against Buyer's property; (5) any amount resulting from Contractor's or its Subcontractors' failure to perform the obligations of this purchase order.
- (e) Unless otherwise specifically agreed to by Buyer, no payment, whether previously withheld or of any other amount shall constitute an acceptance of any defective or non-conforming Work or otherwise relieve Contractor of any obligation arising under this purchase order.
- 23. LIENS AND TITLE** - Contractor warrants that it has title to the goods to be delivered under this purchase order and shall deliver same free of all liens, claims and encumbrances. Contractor shall keep the real property where Work is performed under this purchase order free and clear of all liens and claims and encumbrances arising from the performance of this purchase order by Contractor or its Subcontractors.
- Title to all Work completed and all material, equipment and fixtures installed in the Work, shall vest in Buyer upon installation thereof at the construction site, and Contractor shall deliver to Buyer all necessary evidence of ownership relating thereto.
- Unless otherwise mitigated in an agreement between the parties, Contractor shall transfer title to Buyer any Work in progress, the completed or partially completed plans, drawings, information and other property for any terminated Work, in whole or in part, that would have been required to be furnished to Buyer as if the purchase order had been completed.
- 24. NEWS OR ADVERTISING RELEASE** - No news release in any way relating to Buyer or Contractor concerning the purchase order shall be made by either party to any news media or to the general public without the prior approval of the other party. Contractor will not, and will require its suppliers and Subcontractors to not, advertise or publish the fact that Buyer has ordered Work from Contractor, or the terms or nature of such order. Contractor will not, and will cause its employees and other representatives to not, disclose such information in company periodicals, press releases, public lectures, sales or other promotional literature, or otherwise. The parties agree that in the event a news release is so approved and made, such news will recognize Buyer and Contractor.
- 25. ORDER OF PRECEDENCE** - The various documents constituting this purchase shall, insofar as is possible, be interpreted so as to be consistent with one another. In the event that a conflict or ambiguity arises in the interpretation of this purchase order, said conflict or ambiguity shall be resolved in accordance with the following order of precedence, with the first listed item having a higher precedence than later listed items: (a) provisions required by statute, regulation; (b) typed purchase order form; (c) this terms and conditions document; (d) Statement of Work; (e) specifications, and; (f) drawing(s).
- 26. INTELLECTUAL PROPERTY RIGHTS** - (a) Contractor agrees to make prompt and complete disclosure to Buyer of all inventions and disclosures made or conceived as a result of Work performed under this purchase order. Contractor agrees to keep necessary records supporting such inventions and discoveries and will furnish to Buyer upon request all such records.
- (b) Any invention, discovery, proprietary information, maskwork, software, system, data, or report resulting from the Work performed under this purchase order shall be the sole property of Buyer. All patents, copyrights, trade secrets, trademarks, maskworks or other intellectual property resulting from Work under this purchase order shall be the sole property of Buyer. Buyer shall have the full right to use such property in any manner without any claim on the part of Contractor and without any duty to account to Contractor for such use. Contractor agrees to assign to Buyer any patent or patent application resulting from Work performed under this purchase order, and to provide reasonable support for Buyer's prosecution of such patent application. The parties agree that any original work of authorship created under this purchase order is a work made for hire for purposes of copyright ownership. To whatever extent Contractor has any interest in any original work of authorship created under this purchase order, Contractor agrees to assign and hereby assigns its entire interest in such work to Buyer, including all rights to derivative works.
- (c) This purchase order does not confer or grant, in any manner whatsoever, any license or right under any patent, trademark, trade secret, maskwork, copyright or other intellectual property right held by Buyer, unless specifically set forth in the body of the purchase order.
- 27. PROTECTION OF INFORMATION** - (a) If a separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Contractor which relates to the subject matter of this purchase order, then confidential or proprietary information furnished by one party to the other party shall be protected pursuant to such agreement, and paragraphs (b) through (g) of this clause shall not apply.

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(b) If no separate confidentiality, nondisclosure, or proprietary information agreement exists between Buyer and Contractor, paragraphs (c) through (g) of this clause apply.

(c) For purposes of this clause, "Information" shall mean information disclosed to Contractor by Buyer in connection with this purchase order, which is either identified to Contractor as being proprietary or which is information a reasonable person would understand to be such information. Examples of Information include, but are not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specifications, manuals, print-outs, notes and annotations, performance data, designs, drawings, dimensions, blueprints, processes, data, reports, photographs, and engineering, manufacturing or technical information related to Buyer's products, services, equipment, floor plans, architectural designs, or processes, as well as duplicates, copies or derivative works thereof. Information shall not mean any information previously known to Contractor without obligation of confidence, or which becomes publicly disclosed, or which is rightfully received by Contractor from a third party without obligation of confidence.

(d) Information furnished to Contractor shall remain Buyer's proprietary property, shall be duplicated only as authorized in writing by Buyer, and shall be returned to Buyer upon request or when no longer required for the performance of this purchase order. Contractor shall not disclose Information to any third party, and shall take all reasonable precautions to prevent the disclosure of Information to third parties, including any foreign national, firm or country, and foreign nationals employed by or associated with Contractor's company except as specifically authorized by Buyer. Contractor agrees not to use Information to develop any product, service or system, or to support any third party in the development of any product, service or system.

(e) Data and information provided by Contractor shall be considered proprietary only when marked as proprietary. Contractor's proprietary data and information will be used by Buyer only upon approval by Contractor.

(f) Contractor's obligations with respect to Information disclosed hereunder prior to the performance in full, termination or cancellation of this purchase order shall not, except as expressly set forth herein, be affected by such performance in full, termination, or cancellation.

(g) Buyer or its representatives may at any time audit all pertinent books, records and files of Contractor in order to verify compliance with this clause. Contractor will, in all of its contracts with its suppliers relating to any Buyer purchase order, include provisions which secure for Buyer all of the rights and protections provided for by this paragraph.

**28. QUANTITY** - Buyer need not accept any variation in quantity except as specified in this purchase order. Overshipments may be returned to Contractor at Contractor's expense, which shall include a reasonable cost for Buyer's handling, or be retained by Buyer at no increase in price. To the extent that Work covered by this purchase order are produced in accordance with drawings or specifications that are proprietary to Buyer or to Buyer's customer, Contractor shall not manufacture or retain for the purpose of display, or otherwise, any more such Work, or parts therefore, than are required to be delivered under this purchase order. Any such excess supplies, or parts therefore, shall be delivered free of charge to Buyer at the designated delivery point at Contractor's risk and expense, or destroyed and certified of same.

**29. WORKMANSHIP** – (a) All Work performed by Contractor will be performed in a workmanlike manner.

(b) Unless otherwise specifically provided in writing by Buyer, all material (which term as used in this purchase order shall include all materials, equipment and other items incorporated or to be incorporated in the Work covered by this purchase order) shall be new and of the most suitable grade for the purpose intended.

(c) Unless otherwise specified elsewhere in this purchase order, Contractor shall set, cut and lay out the Work as necessary and

shall furnish all stakes, templates, platforms, equipment and labor that may be required in performing the Work. All stakes or other marks shall be preserved by Contractor until removal is authorized by Buyer's Authorized Purchasing Representative. Buyer shall furnish, on request from Contractor, all location and limit marks reasonably necessary per the specifications of the Work.

(d) Basic elevations and controlling location reference points as may be designated in the drawings or specifications shall be established by Contractor.

(e) Contractor shall provide such survey work as required for the execution of this purchase order. Contractor shall be responsible for the accuracy of such intermediate lines and grades which shall be subject to check from time to time by Buyer. Failure of Buyer to check shall not relieve Contractor of responsibility for the accuracy of all lines and grades. Dimensions shown on the drawings or specifications are to be verified in the field by Contractor.

(f) Contractor shall submit shop drawings to Buyer for approval: (1) where shop drawings are required by the purchase order; (2) where Contractor is requesting to perform Work in a manner significantly different from the details shown in the purchase order, or; (3) where substitutions require rearrangement of portions of Work. All shop drawings shall be accurately dimensioned and show all details necessary to define the contemplated Work completely. Submittal shall be made with sufficient lead time to avoid delay. Approval of shop drawings by Buyer is limited to general configuration and shall not relieve Contractor of any responsibility for defects in design or other errors or omissions in such drawings, or from compliance with all other requirements of this purchase order.

(g) When required by this purchase order or when requested by Buyer, Contractor shall promptly furnish to Buyer for its approval full information concerning, and samples of, the material to be incorporated in the Work. Material installed or used without required approval shall be at the risk of subsequent rejection.

(h) Approval by Buyer of material shall not relieve Contractor of any warranty with respect thereto or any obligation or liability in connection with this purchase order.

**30. SUBSTITUTIONS** – (a) Contractor shall not substitute materials or accessories without written consent of Buyer except to the extent necessary for incidental construction material used in the course of everyday construction work provided such substitutions are substantially the same form, fit & function as contemplated by the plans, drawings and specifications, comply with referenced standards stated in the specifications, and will not create a material alteration to the Work as contemplated by this purchase order or destroy or otherwise alter the structural integrity of the Work or create any physical or environmental hazards whether known or not known at the time.

(b) All lists, rules, regulations and standards referred to in this purchase order are recognized by Contractor as requirements of this purchase order. When American Society of Testing Materials (ASTM) specifications or other material, workmanship or industry standards or codes are referred to in this purchase order, it is understood to mean that these specifications shall comply with the most current ASTM or industry code referenced in effect at the time of performance of this purchase order.

(c) In the event Contractor or its Subcontractors uses materials, supplies, goods or processes not so permitted by the specifications or authorized by Buyer's Authorized Purchasing Representative, Contractor, at the request of Buyer, shall be obligated to remove and replace such materials at no cost to Buyer. The remedies provided for herein are in addition to any other remedies available to Buyer.

(d) Unless otherwise specifically provided in this purchase order, reference to any material or patented process by trade name, make or catalog number, whether or not coupled with the words "or equal," shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and Contractor may, at his option, substitute any material or process which, in the judgment of



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Buyer, is equal to that so referred to. All substitutions, including "or equal" items, must have the prior written approval of Buyer.

(e) Subcontractors and other persons and organizations proposed and accepted by Buyer must be used for the Work contemplated by this purchase order and for which they were proposed and accepted and shall not be changed or otherwise substituted without written approval of Buyer.

- 31. TERMINATION** - This purchase order and any and all rights granted and obligations assumed hereby may be terminated in whole or part by Buyer giving written notice to Contractor. Upon receipt of a notice of termination and except as otherwise mutually agreed, Contractor shall:

A. Stop Work under this purchase order on the effective date of the notice of termination; and

B. Submit a termination claim within sixty (60) days after the effective date of the termination notice incorporating all claims of Contractor. The amount to which Contractor shall be entitled upon complete termination of this purchase order shall be determined as follows:

1. Any payments then due and owing to Contractor from Buyer for Work performed and accepted by Buyer prior to the effective date of termination;
2. An allowance for any reasonable cancellation charges due to material commitments made by Contractor with Contractor's suppliers or Subcontractors;
3. At Buyer's option, an allowance for any inventory held by Contractor which is for Buyer's purchase order, in which case Contractor shall transfer title and possession of said inventory to Buyer in accordance with Buyer's instructions;
4. Any other amounts mutually acceptable to Buyer and Contractor as being fair and reasonable.

C. Assign to Buyer in the manner, at the times and to the extent directed by Buyer, all of the right, title and interest of Contractor under the orders and subcontracts so terminated, in which case Buyer shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of Buyer to the extent it may require, which approval or ratification shall be final for the purposes of this clause;

In the event payment has been made in excess of the amount determined as being the entitlement of Contractor under the provisions of this article, Contractor shall repay such excess costs immediately. Buyer may deduct as a set off any excess amounts from other open subcontracts or purchase orders with Contractor, if any.

In the event payments made by Buyer are less than the amount determined as being the entitlement of Contractor under the provisions of this article, Buyer shall pay to Contractor such difference between the amount so paid and the total amount determined to be due Contractor in accordance with this article within thirty (30) days of Buyer's receipt of Contractor's invoice for said amount.

Notwithstanding the foregoing, the parties hereto may mutually agree to a partial termination of the purchase order provided such agreement: (1) equitably revises the price for Work remaining to be performed by Contractor thereafter; (2) equitably revises all such other rights, risks, obligations and/or responsibilities as may be affected by such partial termination; and (3) is evidenced by a formal modification to this purchase order signed by both parties.

Additionally, Buyer may terminate for convenience any portion of Work under this purchase order being performed under a subcontract and shall have the right to: (1) contract directly with such Subcontractor, or; (2) upon request by Buyer, Contractor shall assign the applicable subcontract to Buyer. The terms and conditions of Contractor's subcontracts shall name Buyer as a third party beneficiary to the

termination clause, authorizing Buyer the right to terminate the Subcontractor.

Buyer's total liability to Contractor for any termination pursuant to this article shall not exceed the purchase price of the Work or portion of Work to which such termination applies. Further, Contractor shall have no claim against Buyer for loss of anticipated profits or consequential damages suffered by reason of such termination.

- 32. WARRANTY** – (a) Contractor warrants that the Work and structure covered by this purchase order will conform to the design, specifications, drawings, samples or other descriptions referred to in this purchase order, will be free from defects in material and workmanship, and, to the extent that Contractor knows or has reason to know of the purpose for which the Work are intended, will be fit and sufficient for such purpose. Buyer shall give Contractor written notice of any such defect or nonconformance within one year (or such longer warranty period as may be specified elsewhere in this purchase order) after final acceptance by Buyer of all Work required by this purchase order. In such notice, or within sixty (60) days thereafter, Buyer shall, at its sole discretion, direct Contractor to correct, to partially correct, or not to correct the defect or nonconformance.

(1) Contractor shall comply with any such direction. If the direction is to correct or to partially correct, Contractor shall, at no cost to Buyer, promptly and satisfactorily correct or partially correct, as directed, the defect or nonconformance and remedy any damage to other parts of the Work or any other property resulting from such defect or nonconformance. This warranty shall then continue as to any corrected or partially corrected Work for one year (or such longer warranty period as may be specified elsewhere in this purchase order) after final acceptance by Buyer of the correction or partial correction. In addition, if the direction is to partially correct or not to correct, Contractor shall promptly repay to Buyer such portion of this purchase order as is equitable under the circumstances.

(2) If Contractor fails to comply with any timely direction to correct or to partially correct any such defect or nonconformance, Buyer may do so and recover from Contractor the cost thereof.

(b) Contractor warrants that the Work provided under this purchase order shall not infringe upon the rights of any third party, and that Contractor is subject to no agreement which in any manner would interfere with Buyer's intellectual property rights as described in the provisions herein entitled Intellectual Property Rights and Protection of Information.

(c) The rights and remedies of Buyer provided in this clause are in addition to and do not limit any rights and remedies afforded to Buyer by any other clause of this purchase order or by law or otherwise.

- 33. EXPORT RELATED REQUIREMENTS** – (a) Export Compliance. Contractor is advised that its performance of this Purchase Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Contractor represents and warrants that it is a U.S. Person as that term is defined in the Export Laws and Regulations; or 2) that it has disclosed to Buyer's Authorized Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and U.S. immigration status. Contractor shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.

(b) Foreign Personnel/Persons. Contractor shall not give any Foreign Person (including Contractor's own non-U.S. employees or

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affiliates) access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Buyer. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the "Immigration and Naturalization Act"), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Contractor's request under this paragraph (b) shall relieve Contractor of its obligations to comply with the provisions of paragraph (a) or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph (a), nor constitute consent for Contractor to violate any provision of the Export Laws and Regulations.

(c) Indemnification. Contractor shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys' fees, arising out of claims, suit, allegations or charges of Contractor's failure to comply with the provisions of this Clause and breach of the warranty set forth in paragraph (a). Any failure of Contractor to comply with the requirements or any breach of the warranty contained in this clause shall be a material breach of this purchase order.

(d) Subcontracts. The substance of this clause shall be incorporated into any subcontract or purchase order entered into by Contractor for the performance of any part of the Work under this purchase order.

- 34. NONWAIVER AND REMEDIES** - A party's failure at any time to enforce any provision of this order shall not constitute a waiver of that provision or prejudice a party's right to enforce that provision at any subsequent time. The parties' rights and remedies as provided in this purchase order are in addition to others provided by law; any failure to state a right or remedy herein does not constitute a waiver of such other rights and remedies.
- 35. INDEPENDENT CONTRACTOR** - Contractor shall perform the Work provided for as an independent contractor and at its sole risk and responsibility. Employees and Subcontractors engaged in Contractor's Work hereunder shall not be in any sense employees or Subcontractors of Buyer, but shall be employees and Subcontractors of Contractor during the period of performance of this purchase order and shall be subject to the rules and regulations and management of Contractor. Contractor shall not act in any sense as agent or representative of Buyer. Contractor shall establish and enforce rules and regulations for its employees and Subcontractors while on the Work location, including all security and safety regulations as herein provided.
- 36. WAIVER OF RIGHT TO JURY TRIAL** - Buyer and Contractor hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or hearing brought by either party against the other on any matter whatsoever arising under, relating to, or in any way connected with this purchase order, the relationship of Contractor and Buyer, any claim of injury or damage, or the enforcement of any remedy under any law, statute or regulation now or hereafter in effect.