

TEXAS SPECIFIC PURCHASE ORDER AGREEMENT – FABRICATED MATERIAL

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1.1. Transportation and Inspection.

(a) All materials shall be delivered F.O.B. to the project site, without charge for boxing, crating, or packing.

(b) Acknowledgement of delivery by Purchaser’s on-site personnel shall not be deemed as acceptance of the goods and Purchaser’s on-site personnel are not authorized to change or alter the terms or conditions of this Purchase Order.

(c) Goods are accepted only upon acceptance of the Owner and its representative, the Architect/Engineer. Purchaser’s notice of rejection shall be within a reasonable time after receipt by Purchaser of a notice of rejection from the Owner and/or the Architect/Engineer. Materials rejected on account of non-conformance, inferior quality or workmanship will be returned with charge to Vendor for transportation both ways plus labor for reloading, trucking, etc.

1.2. Contract Documents.

(a) The Contract Documents shall include, in addition to this Purchase Order, all documents reflecting the agreement between the Owner and the Purchaser for the Project, including, but not limited to the plans, specifications, general conditions, special conditions, and addenda (the “Prime Agreement”).

(b) Vendor acknowledges that he has read the Contract Documents and is familiar with each and every part thereof affecting this Purchase Order together with all related drawings, plans, and specifications, and all general conditions and special conditions incidental thereto. Vendor has satisfied himself as to the character, quantity, and kinds of materials necessary, and other matters affecting compliance with the Contract Documents. Further, Vendor hereby warrants that all materials furnished pursuant to this Purchase Order comply with all provisions of the Contract Documents and are fit for the purpose for which they are intended.

(c) Any questions arising with respect to interpretation of the Contract Documents or any related drawings, plans, or specifications shall be submitted through the Purchaser, and the Vendor shall follow the Purchaser’s directions with respect to such matters.

(d) The Vendor agrees to be bound to the Purchaser under this Agreement according to the same terms and conditions as the Purchaser is bound to the Owner under the Contract Documents. The Vendor shall assume all of the obligations and responsibilities of the Purchaser under the Contract Documents, which pertain or relate to the scope of materials furnished under this Purchase Order.

ARTICLE II

TIME OF DELIVERY AND DAMAGES FOR DELAY

2.1. Time. Time is of the essence to this Agreement. Vendor shall timely deliver all materials purchased under this

Purchase Order as instructed by the Purchaser and shall not cause delay in the progress of Purchaser's work.

2.2. Delivery Schedule. Vendor shall deliver all materials pursuant to the Delivery Schedule provided by Purchaser, unless Vendor notifies Purchaser within three (3) calendar days from receipt of the Delivery Schedule that the materials cannot be delivered within the Delivery Schedule. Purchaser may, from time to time as the Work progresses, reschedule the order of the delivery by Vendor or otherwise revise Vendor's schedule. Vendor agrees to comply with such schedule revisions without any increase to the Purchase Order Price.

2.3. Damages for Delay. Vendor shall be liable for any damages for delay sustained by Purchaser caused directly or indirectly by Vendor, including, but not limited to, damages, liquidated or otherwise, for which Purchaser is liable to Owner. Any such damages shall be deducted from payments due Vendor, and, if such damages exceed the amount of payments due, Vendor shall pay Purchaser upon demand such excess damages due.

2.4. Time Extensions. Purchaser shall not be liable to Vendor for delays caused by the act, neglect or default of the Owner or Owner's representative, or by reason of fire or other casualty, or on account of riots or strikes, or other combined actions of the workmen or others, or on account of any acts of God, or any other causes beyond the Purchaser's control, or any circumstance caused or contributed to by any subcontractor or any other party performing a part of the Work; but, Purchaser will cooperate with Vendor to enforce any just claim against the Owner or Owner's representative for delay. Purchaser shall be reimbursed by Vendor for any expense, including attorney's fees, incurred in connection with any claims asserted at the request of Vendor. SHOULD VENDOR BE DELAYED BY PURCHASER, THEN VENDOR'S SOLE AND EXCLUSIVE REMEDY AGAINST PURCHASER SHALL BE AN EXTENSION OF TIME FOR DELIVERY EQUAL TO THE DELAY CAUSED, AND THEN ONLY IF WRITTEN CLAIM FOR DELAY IS MADE TO PURCHASER WITHIN THREE (3) DAYS FROM THE TIME OF THE BEGINNING OF THE DELAY, AND VENDOR WAIVES ALL CLAIMS AND CAUSES OF ACTION AGAINST PURCHASER FOR DELAY DAMAGES EXCEPT THOSE SPECIFICALLY PROVIDED HEREIN.

ARTICLE III
PRICE AND PAYMENTS

3.1. Purchase Order Price. Purchaser agrees to pay to Vendor the unit prices multiplied by the quantities actually delivered and incorporated into the Project, subject to adjustments for changes pursuant to Article IV, Changes. The Purchase Order Price shall include all materials, taxes, transportation, boxing, crating, packing and insurance.

TEXAS SPECIFIC PURCHASE ORDER AGREEMENT – FABRICATED MATERIAL

3.2. Payment. Purchaser’s obligation to make final payment to Vendor is specifically contingent upon, as a condition precedent to payment, approval by the Owner, Architect/Engineer and Purchaser of the materials provided by Vendor hereunder. Acceptance of payment shall constitute a waiver of all claims by the Vendor relating to materials provided by Vendor under this Purchase Order, but shall in no way relieve the Vendor of liability for the obligations for replacing faulty or defective materials, which are discovered by Purchaser after payment. In the event of any of the following conditions, the Purchaser may withhold from payments, such amounts as necessary to protect the Purchaser from losses on account of: (i) Vendor’s delivery of defective materials; (ii) Vendor’s failure to pay any laborers, materialmen, or subcontractors providing labor, equipment, materials, or transportation in connection with the performance of this Purchase Order; (iii) Vendor’s failure to timely deliver materials in accordance with the delivery schedules; (iv) Vendor’s breach of any provision of this Purchase Order; or (v) Vendor’s breach of any provision or obligation of another agreement between Purchaser and Vendor, which shall entitle Purchaser to offset the damages from such breach against payments due under this Purchase Order. Purchaser may, in its sole discretion, make any payments due hereunder by means of checks jointly payable to the Vendor and any of Vendor’s materialmen, sub-subcontractors, or transporters. Vendor agrees that any such joint check payments made shall constitute payment to the Vendor under this Purchase Order for the full amount of such joint check.

ARTICLE IV
CHANGES

4.1. The Vendor may be ordered by the Purchaser, without invalidating this Purchase Order, to make changes in the materials ordered pursuant to this Purchase Order consisting of additions, deletions or other revisions to the materials provided. Prior to fabricating or manufacturing such changed or revised materials, Vendor shall promptly submit to the Purchaser any claim for adjustment to the Purchase Order Price or Delivery Schedule because of such changed or revised materials.

4.2. VENDOR SHALL NOT BE ENTITLED TO ANY EXTRA COMPENSATION OR EXTENSIONS IN DELIVERY TIMES FOR ANY CHANGES OR REVISIONS UNLESS THE VENDOR HAS GIVEN THE PURCHASER WRITTEN NOTICE OF A CLAIM FOR EXTRA COMPENSATION OR FOR AN EXTENSION TO DELIVERY TIME PRIOR TO THE VENDOR’S INCURRING EXTRA COSTS FOR THE CHANGE OR REVISION OR PRIOR TO THE DELAY FOR WHICH VENDOR BELIEVES AN EXTENSION TO DELIVERY TIME IS JUSTIFIED. WITHOUT SUCH NOTICE, SUCH CLAIM FOR EXTRA COMPENSATION OR AN

EXTENSION TO THE DELIVERY TIME SHALL BE DEEMED WAIVED.

4.3. Notwithstanding anything contained herein to the contrary, if the changes or revisions for which the Vendor claims extra compensation to be due, is determined by the Owner, or the Architect/Engineer as the Owner's representative, to be such that the Vendor is not entitled to additional compensation from the Owner, the Purchaser shall not be liable to the Vendor for any extra compensation. The decision of the Owner, or the Architect/Engineer as the Owner's representative, shall be final with regard to whether extra compensation is due and with regard to the amount of such extra compensation.

4.4. If the Purchaser and Vendor do not agree upon either (i) whether or not the Vendor’s written notice requesting extra compensation constitutes a change in the original scope of the Purchase Order or (ii) the reasonable amount of extra compensation due for the changed or extra materials, then Vendor shall proceed with delivery of the materials in accordance with the instructions of Purchaser. In such event, the Vendor shall maintain and present to the Purchaser, in the form as the Purchaser may prescribe, an itemized accounting of costs, together with appropriate supporting data, for all extra material, labor, or fabrication costs expended by the Vendor for the changed or additional materials. For changed or additional materials beyond the original scope of the Purchase Agreement, the Vendor shall be entitled to recover, subject to the requirements for notice, all material, labor, and fabrication costs expended for the changed or additional scope of work, plus the lesser of the percentage amount allowed by the Prime Agreement for subcontractor overhead and profit or the sum of 15% as an aggregate amount for Vendor’s overhead and profit.

ARTICLE V
INDEMNIFICATION

5.1. ONLY TO THE EXTENT AND UNDER THE CONDITIONS ALLOWED UNDER TEXAS LAW, THE VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE PURCHASER, THE OWNER, AND ALL OF THEIR OFFICERS AND EMPLOYEES (THE “INDEMNIFIED PARTIES”) FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, EXPENSES (INCLUDING ANY ARBITRATION OR LITIGATION EXPENSES) AND/OR ATTORNEYS’ FEES ARISING OUT OF, OR RELATING TO OR CONNECTED WITH THE MATERIALS FURNISHED UNDER THIS PURCHASE ORDER, EVEN IF ANY SUCH CLAIM, DAMAGE, LOSS, EXPENSE AND/OR ATTORNEYS’ FEES IS CAUSED BY A NEGLIGENT ACT OR OMISSION BY ANY OF THE INDEMNIFIED PARTIES. THE EXPRESSED INTENTION OF THE PARTIES IS THAT THE VENDOR’S INDEMNITY HEREIN WILL INDEMNIFY AND PROTECT ANY OF THE INDEMNIFIED PARTIES FROM THE

TEXAS SPECIFIC PURCHASE ORDER AGREEMENT – FABRICATED MATERIAL

CONSEQUENCES OF THEIR OWN NEGLIGENCE, BUT ONLY TO THE EXTENT AND UNDER THE CONDITIONS ALLOWED UNDER TEXAS LAW.

CLAIMS

ARTICLE VI
WARRANTY

6.1. The Vendor warrants to the Owner and Purchaser that all materials furnished under this Purchase Order shall be free from any and all defects due to faulty workmanship and/or materials. The Vendor further agrees to execute any special guarantees as provided by the terms of the Contract Documents, prior to and as a condition precedent to final payment. The Vendor further warrants that all laborers, materialmen and subcontractors providing labor, equipment, or materials for the Purchase Order will be paid such that neither the Owner, Purchaser, Purchaser's surety, or Owner's property will be subject to any claims, liens or encumbrances. In the event Purchaser receives notice of a lien claim or bond claim from Vendor's materialmen, sub-subcontractors, transporters, or laborers, at any tier, Purchaser may, at Purchaser's option, directly pay any such claimant. Any such direct payment to a claimant and any expense in processing such claim and payment shall be deducted from payments otherwise due Vendor, and if such payments and expenses exceed the amount of payments due. Vendor shall pay Purchaser upon demand such excess amount.

8.1. Choice of Law and Venue. The terms of this Purchase Order shall be governed and construed in accordance with the laws of the State of Texas. Venue for any suit or legal proceeding arising out of a default to this agreement, or related to the materials furnished under this Agreement, shall be in Tarrant County, Texas.

8.2. Attorney's Fees. In the event the Purchaser is required to retain the services of an attorney to enforce this Agreement, or to defend against any cause of action, claim, or counterclaim brought by the Vendor on which the Vendor does not prevail, then the Purchaser shall be entitled to recover the attorney's fees and costs incurred, in addition to other remedies to which the Purchaser is entitled under Texas law. In the event that the Vendor is required to retain the services of an attorney to enforce this Agreement and the Vendor prevails in asserting a valid claim under this Agreement, then the Vendor shall be entitled to recover attorney's fees and costs incurred, in addition to other remedies to which the Vendor is entitled under Texas law.

8.3. Continued Performance. The Vendor shall carry on Vendor's performance of its obligations under this Purchase Order and maintain the Delivery Schedule during any arbitration or litigation proceedings.

ARTICLE VII
TERMINATION

7.1. Should the Vendor fail at any time to timely deliver materials pursuant to the Delivery Schedule, as determined by the Purchaser in its sole discretion, or fail to promptly correct defective Work or fail in the performance of any of the agreements herein contained, the Purchaser may, at its option without notice, provide any portion of the materials, up to the whole thereof, and deduct the cost, together with all loss or damage occasioned thereby, from any money then due or thereafter to become due to the Vendor under this Agreement. If such cost, loss, and damage exceed the unpaid Purchase Order Price, Vendor shall pay Purchaser the balance of such excess upon demand.

7.2. The Purchaser may, at its option, at any time, terminate the whole or any part of the delivery of materials under this Purchase Order for the convenience of the Purchaser. Vendor agrees that upon any such termination, the Vendor's sole remedy shall be payment of full value for all materials delivered, less all payments Vendor has previously received on account of such materials delivered. **VENDOR AGREES TO WAIVE ALL OTHER CLAIMS FOR DAMAGES, INCLUDING LOST OR ANTICIPATED PROFITS, ARISING FROM OR RELATED TO ANY SUCH TERMINATION BY PURCHASER.**

ARTICLE VIII

ARTICLE IX
ADDITIONAL OBLIGATIONS OF PARTIES

9.1. Additional Obligations of Vendor. In addition to the other engagements of the Vendor hereunder, Vendor hereby agrees that Vendor shall:

(a) Not discriminate against any employee or applicant for employment because of race, creed, color, age sex, or national origin.

(b) Pay for all materials and labor used in, or in connection with the performance of this Purchase Order, throughout the period covered by payments received from the Purchaser, and furnish satisfactory evidence requested by the Purchaser, including lien waivers, affidavits or other documentation, which confirms that the Owner's property and Purchaser are free from lien and bond claims.

(c) Not assign this Purchase Order or any amounts due or to become due hereunder without the written consent of the Purchaser; nor subcontract the whole of this Purchase Order without the written consent of the Purchaser; nor further subcontract portions of this Purchase Order without written notification to the Purchaser.

(d) Promptly submit shop drawings and samples no longer than two (2) weeks after the date of this Purchase Order, in order to prevent delay in the progress of the Project. Vendor shall resubmit within three (3) working days, any shop drawings or submittals returned for correction or otherwise rejected.

TEXAS SPECIFIC PURCHASE ORDER AGREEMENT – FABRICATED MATERIAL

(e) Comply with all Federal, State and local laws and ordinances relating to the building or improvements, give adequate notices relating to this Purchase Order to the proper authorities, and secure and pay for all necessary licenses or permits as described in the Contract Documents applicable to this Purchase Order.

(f) Provide all materials subject to the final approval of the Owner's authorized agent, and its decision in matters relating to artistic effect shall be final, if within the terms of the Contract Documents.

(g) Provide sufficient, safe and proper facilities at all times for the inspection of the materials by the Purchaser or its authorized representatives. Materials not meeting the specifications or intent of the drawings shall be removed or rebuilt to conform to same at Vendor's expense.

(h) Perform any payment obligations which Vendor may have to Purchase at the Purchaser's address stated on page one of this Purchase Order.

the attorney's fees and costs incurred, in addition to other remedies to which the Purchaser is entitled under Texas law. In the event that the Vendor is required to retain the services of an attorney to enforce this Agreement, and the Vendor prevails in asserting a valid claim under this Agreement, then the Vendor shall be entitled to recover attorney's fees and costs incurred, in addition to other remedies to which the Vendor is entitled under Texas law.

ARTICLE X MISCELLANEOUS

10.1. Notices. All notices required to be given under this Purchase Order shall be deemed delivered when deposited in the United States mail, first class postage prepaid, addressed to the Purchaser or to the Vendor at the addresses stated on page 1 hereof.

10.2. Entire Agreement. This Purchase Order contains the entire agreement of the parties. All prior proposals, negotiations, correspondence and/or agreements, whether written or oral are superceded by the terms of this Purchase Order, and care of no force or effect. Any modifications to this Purchase Order shall be in writing and shall be signed only by the Purchaser's representative signing this Purchase Order. Any prior conduct or usage of trade shall not supplement or vary the terms of this Purchase Order. No terms or conditions on Vendor's invoices or delivery tickets will alter or amend the terms of this Purchase Order.

10.3. Conflicts in Terms. In the event there is a conflict between the Contract Documents and any provisions of this Purchase Order, the terms of this Purchase Order shall govern.

10.4. Acceptance. The terms and conditions of this Purchase Order shall be deemed accepted upon signing of acceptance by Vendor on the first page of this Purchase Order, or alternatively, upon commencement of material delivery by Vendor. No terms or conditions on Vendor's invoices or delivery tickets will alter or amend the terms and conditions of this Purchase Order.

10.5. Attorney's Fees. In the event that the Purchaser is required to obtain the services of an attorney to enforce this Agreement or to defend against any cause of action, claim, or counter-claim brought by the Vendor on which the Vendor does not prevail, then the Purchaser shall be entitled to recover