

## STANDARD TERMS & CONDITIONS OF PURCHASE



THE BELOW STANDARD TERMS & CONDITIONS OF APPLY WHERE NO OTHER TERMS AND CONDITIONS HAVE BEEN AGREED TO BETWEEN AECON AND A SUPPLIER OR SUBCONTRACTOR.

WHERE AECON HAS SIGNED AN AGREEMENT (OTHER THAN THESE STANDARD TERMS & CONDITIONS OF PURCHASE) WITH A SUPPLIER OR SUBCONTRACTOR, THE TERMS AND CONDITIONS OF THAT AGREEMENT SHALL APPLY AND THESE STANDARD TERMS & CONDITIONS OF PURCHASE SHALL NOT APPLY.

- 1. ACCEPTANCE OF PO** - The Purchase Order ("PO") to which these terms and conditions are attached, and into which these terms and conditions are hereby incorporated, is issued subject to the express condition that it may be accepted only on the terms and conditions contained in it. Seller shall be bound by this PO when Seller indicates its acceptance of the PO by returning an executed copy of the PO within forty-eight (48) hours after issuance by Buyer. If Seller fails to return an executed copy of the PO within the aforementioned time frame, then the PO shall be deemed accepted when Seller commences performance or delivers to Buyer any of the goods ordered herein. The date on which Seller becomes bound by this PO in accordance with the above shall be the date indicated on the PO.
- 2. PAYMENT** - Seller shall invoice Buyer in accordance with the milestone invoicing dates agreed by Buyer. Seller shall include in its invoice (i) the PO number; (ii) line numbers which clearly itemize all incidental charges such as, but not limited to, transportation, taxes and packaging; (iii) any amount previously paid by Buyer, if any; (iv) which amounts of the invoiced amounts are payable to Seller's subcontractors, vendors and/or suppliers; and (v) if applicable, a duly signed waiver of subsequent action. Buyer will not pay any invoices where (i) the amounts of the invoice do not match the amounts on the PO; or (ii) Seller fails to comply with any requirements of these terms and conditions. Buyer's standard payment term is net sixty (60) days of acceptance of Seller's invoice or receipt of goods, whichever occurs later, unless otherwise provided in the PO.
- 3. EXPEDITING** - In the event that delivery of goods is not made in the quantities and at the time or times specified, and Seller has not notified Buyer as required under Article 4 and Buyer has not agreed to the delay, Buyer may, at its sole option and without incurring any liability and in addition to all other rights and remedies which it may have pursuant to this PO or otherwise at law or equity, take either or both of the following courses of action: (a) direct expeditious routing of goods (the difference in cost between the expedited routing and the PO routing costs to be paid wholly by the Seller); or as to goods not yet shipped, (b) terminate this PO by notice in writing and purchase substitute goods elsewhere and charge the Seller with any loss, direct or

indirect, thereby incurred, including, without limitation, any loss incurred as a result of paying more for the replacement goods than would have been paid for the goods to be acquired hereunder.

- 4. DELAYS** - Seller shall notify Buyer within twenty-four (24) hours of the occurrence of any event which could affect the delivery schedule, the price, the Seller's performance under this PO or any other condition of or action required to be taken by the Seller under this PO. Seller shall receive an extension of time, equal to the delay, in providing the goods where Seller is delayed by Buyer or by an act of God, labor dispute, fire, war, riot, epidemic, or severe and unusual weather, provided, however, that Seller has used commercially reasonable efforts to mitigate the effects of any delay not caused by the Seller and such mitigation measures have been accepted by Buyer. If Seller does not deliver the goods on the agreed time of delivery, Buyer is entitled to liquidated damages in the amount stipulated in the PO. Seller's payment of liquidated damages due to delay does not exclude the right of Buyer to claims for compensation for any direct loss in excess of the liquidated damages amount. The parties agree that liquidated damages shall not be a penalty.
- 5. INSPECTION AND ACCEPTANCE** - All goods are subject to inspection and approval by Buyer prior to acceptance by Buyer. Buyer may inspect at all times and places including the period of manufacture. In any event prior to final acceptance Buyer may inspect the goods for work quality, conformance with specifications and conformance with all of Seller's representations, warranties and covenants herein. Neither delivery of goods to Buyer, nor the receiving or inspection of the goods, nor payment for the goods by Buyer shall relieve the Seller of its obligations herein. Buyer may reject, in whole or in part, at Seller's cost and upon written notice to Seller, goods that are not in the quantity or quality required under the PO or Seller's representations, warranties and covenants. Buyer shall have no obligation to pay for or give other consideration for rejected goods. Buyer shall hold such rejected goods with reasonable care at Seller's disposition for a time sufficient to permit Seller to remove such rejected goods. Buyer's expenses for inspection, storing or returning any rejected goods shall be charged to Seller or deducted from amounts due to Seller.
- 6. WARRANTY** - Seller warrants that the goods: (i) are free from defects in design, materials and workmanship; (ii) conform with all specifications attached or contained in the PO and all documentation and information provided by Buyer for the goods; (iii) are fit for their intended purpose as specified in the PO; and (iv) are new, unused (unless otherwise specified in this PO) and merchantable. Seller shall replace or repair, as mutually agreeable between the Seller and Buyer, all Defective Goods, as defined below, without cost to Buyer, if, within a period of twelve (12) months following installation of goods, or eighteen months (18) from acceptance of goods, whichever occurs first, the goods are determined to be defective in material, performance, workmanship, are not new or unused or are otherwise not in accordance with the requirements of the PO

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("Defective Goods").<sup>1</sup> The warranty for fraud and latent defects shall be perpetual. Repaired or replaced Defective Goods shall be re-warranted for the period as set out herein. THE EXPRESS WARRANTIES SET FORTH IN THIS CONTRACT ARE NOT EXCLUSIVE AND THIS CONTRACT SHALL INCLUDE ALL OTHER WARRANTIES AVAILABLE AT LAW OR EQUITY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED (INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY AND IMPLIED WARRANTIES OF CUSTOM OR USAGE). The warranty shall not extend to (i) any repairs or replacements which may be required as a result of normal wear and tear in the operation of the goods, (ii) normal degradation in the performance of equipment, (iii) resulting damage, provided that the Seller shall be responsible for paying to Buyer the amount of any insurance deductible applicable to any insurance claim in respect of such resulting damage, or (iv) as a result of Buyer's failure to operate or maintain the Goods in accordance with the Seller's recommendations.

**7. CONTINUOUS PERFORMANCE** - Pending the settlement of any dispute, difference or claim arising under this PO, the Seller shall proceed diligently with the performance required of it under this PO.

**8. CHANGES** - Buyer may at any time, by notice, make changes to this PO. If any such change causes an increase or decrease in the cost or the time required for performance under any part of this PO, an equitable adjustment in the price or delivery schedule, or both as may be required, shall be negotiated by the Buyer and Seller, and a new PO shall be issued accordingly. Any claim for adjustment shall be deemed waived unless asserted by written notice (including details of the claim) to be received by Buyer within ten (10) days of Buyer's notice to the Seller. Seller shall not suspend performance of this PO while Buyer and Seller are in the process of making such changes and any related adjustments. Nothing shall excuse the Seller from promptly proceeding with the PO as amended.

**9. SUSPENSION** - Buyer may suspend the Seller's performance of the PO, in whole or in part, at any time, upon giving the Seller written notice. In the event that a suspension is ordered by Buyer, the Seller shall be entitled to payment for all reasonable and non-recoverable costs allowable pursuant to the PO and incurred by the Seller in its performance of the PO up to the date of suspension. Such costs shall be subject to audit by Buyer. In no event shall payment exceed the PO price less any amount previously received by Seller.

**10. TITLE AND RISK** - Seller warrants that delivered goods are free of all liens, encumbrances and other defects of title. Title to the goods shall pass to Buyer upon delivery. This PO shall be performed at the sole risk of the Seller. Without prejudice to Buyer's right of rejection under "INSPECTION AND ACCEPTANCE", risk shall pass to Buyer as specified on the PO.

**11. SHIPPING INSTRUCTIONS** - All goods delivered shall be accompanied by a packing slip and, where appropriate, Material Safety Data Sheets. The packing slip shall provide at least the

following information: a description of the items, part numbers, revision status, quantity shipped and PO number. The Seller shall comply with all requirements of the U.S. Department of Transportation Hazardous Materials Regulations, the International Maritime Dangerous Goods Code and good commercial practice, acceptable to common carriers for shipment, and adequate to insure their safe arrival at the ultimate destination. Shipping shall be F.O.B. Destination unless the PO specifies otherwise.

**12. STORAGE** - At the request of the Buyer, Seller shall undertake to store the goods or part thereof as described in the PO at Seller's own cost and risk (obtaining an insurance policy, where appropriate) in a workmanlike and expert manner for a period of up to two (2) months. Buyer will inform Seller in writing as to whether this storage clause shall be applied. The storage period shall commence with the notification of availability for delivery but not earlier than on the agreed delivery date. Should the Buyer require in writing an extension of the storage period agreed upon as above, Seller may claim cost reimbursement from the beginning of the said time extension up to a maximum amount of direct, auditable and necessary costs. Seller shall assure for the entire storage period that the Buyer may use and dispose of the stored goods at any time if and as so requested.

**13. CANCELLATION FOR CONVENIENCE** - Buyer has the right to cancel this PO or any part thereof at any time in its sole and absolute discretion upon giving the Seller written notice. Upon receipt of such written notice, the Seller shall immediately cease all action under this PO. In the event that a cancellation is ordered by Buyer, the Seller shall be entitled to payment for all reasonable and non-recoverable costs allowable pursuant to the PO and incurred by the Seller in its performance of the PO up to the date of notification of cancellation in writing. Such costs shall be subject to audit by Buyer. In no event shall payment exceed the PO price less any amount previously received by Seller.

**14. DEFAULT** - If Seller fails to make satisfactory progress in performing its obligations hereunder, as may reasonably be determined by Buyer, or if Seller is in default of performing any obligation under the PO and fails to take steps satisfactory to Buyer to remedy the default within five (5) days of receipt of written notice from Buyer, Buyer may at any time by notice terminate all or any part of this PO. Buyer may terminate this PO forthwith with written notice to Seller: (A) if Seller becomes insolvent or admits its inability to pay its debts generally as they come due; (B) any sheriff, marshal, custodian, trustee or receiver is appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of Seller's property; (C) a case is filed by Seller under the United States Bankruptcy Code, as now or hereafter in effect (the "Bankruptcy Code") or any other insolvency law; (D) a case is filed against Seller without Seller's application or consent under the Bankruptcy Code or any other insolvency law and such case continues without dismissal for thirty (30) days; (E) Seller makes a general assignment for the benefit of creditors; (F)

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Seller is dissolved or liquidated or takes any corporate action for such purpose, or (G) if Seller breaches Section 23 hereof.

**15. SELLER'S LIABILITY** - The Seller shall be liable to and shall indemnify and hold harmless the Buyer from all claims, actions, causes of action, judgments, fines, costs, losses, penalties, expenses, fees, damages (whether liquidated or otherwise), reasonable attorneys' fees and legal costs, cost of compliance with regulatory orders and any other liabilities arising from safety infractions, environmental damage, violation of any applicable law, infringement or alleged infringement of intellectual property rights, injuries, damage to property, injuries to persons including death, Seller's negligence, breach of this PO, or any event caused or contributed to by the Seller for which Buyer is required to indemnify or pay damages, or any other acts or omissions of the Seller or any of its directors, officers, agents, employees, servants, material suppliers, affiliates, sub-suppliers or assignees with respect to this PO. Without abrogating or waiving Buyer's other rights, in the event Seller fails to promptly honor the terms of this provision upon demand by Buyer, the Buyer or its affiliates may set-off against any monies otherwise due to Seller by the Buyer.

**16. LIMITATION OF LIABILITY** - Notwithstanding any other provision of this PO, excluding however liability under sections 19 and 20, Buyer's total liability resulting from or in connection with this PO shall not exceed the PO price. Notwithstanding any other provision herein, in no event shall either party be liable to the other, or their respective directors, officers or employees, for any punitive or exemplary damages which may include without limitation loss of actual or anticipated revenue or profits, business interruption, loss of use of property, loss of business opportunity, increased capital or operating costs or increased financing costs arising out of or related to any causes of action, whether in tort, contract or otherwise (including but not limited to claims and liability under or for breach of contract, negligence, professional errors or omissions, strict liability and breach of express or implied warranty).

**17. FINANCIAL** - This is a firm fixed-price PO in US dollars (unless stated otherwise on the face of this PO). Subject to the F.O.B. as specified in section 11, the price includes all charges, including, but not limited to, charges related to packaging, preservation, transportation, delivery (as applicable), taxes, costs relating to customs and duties, and shall not be subject to adjustment due to changes in rates. Any amount payable or refundable by the Seller to the Buyer may be taken by the Buyer as a cash refund or may be offset by the Buyer against payment due, or to become due, to the Seller under this or any other Purchase Order between the Buyer and the Seller, as the Buyer in its sole discretion may decide. Credits in favor of the Buyer shall not expire.

**18. ASSIGNMENT, WAIVER, SEVERABILITY** - Buyer shall have the right to transfer, sell or assign its rights and obligations hereunder upon written notice to the Seller. Seller shall not transfer, sell or assign this PO or any part thereof without the prior written consent of Buyer. Failure of Buyer to insist on strict performance of any provisions herein or to exercise any right herein will not be construed as a waiver, modification or

relinquishment of the performance of such provision or right(s), or of the right to subsequently demand such strict performance or exercise such right(s), and all such rights will continue unchanged and remain in full force and effect. If any provision or any covenant herein is held void, voidable, invalid or inoperative by Order of any court of competent jurisdiction, no other provision or other covenant will be affected as a result thereof, and, accordingly, the remaining provisions and covenants will remain in full force and effect.

**19. USE OF BUYER PROPRIETARY INFORMATION AND PUBLICITY** - Buyer's Proprietary Information delivered to the Seller under this PO, shall be used solely by Seller and solely for the purpose of performing the obligations contained in this PO as it is confidential information. The Seller covenants that Buyer's Proprietary Information will not be copied or disclosed, and the existence of this PO or Seller's relationship with Buyer shall not be disclosed to any affiliate, subsidiary company or third parties except as specifically authorized in advance by Buyer.

### **20. PATENTS/INTELLECTUAL**

**PROPERTY/PURCHASER'S USE** - Seller warrants that Buyer and its customers may freely use, resell or otherwise deal with the goods without infringement of US or foreign patents, copyrights, trademarks, industrial designs, trade secrets or other intellectual property rights, foreign or domestic, owned or controlled by any other corporation, firm, or person, and held by Seller or any third party. If the goods or any activity in connection therewith are held to be an infringement and their use is enjoined, Seller shall promptly, at the option of the Buyer, secure for the Buyer the right to continue using or reselling the goods; replace the goods with non-infringing goods; modify the goods such that they are no longer infringing; or, if unable to do any of the foregoing, remove the infringing goods and indemnify Buyer for any direct, indirect losses, costs or damages resulting from such infringement.

### **21. CUSTOMS and IMPORT/EXPORT (IF APPLICABLE)**

Seller shall fully comply with all applicable U.S. and foreign export and import control laws. Seller shall be responsible for the timely submission to Buyer of any applicable importer security filing information (ISF) as required by United States Customs and Border Protection (CBP). Timely filing will be no less than four (4) days prior to the goods being laden on board the vessel at the origin port. The Seller shall be solely responsible for any and all costs or delays resulting from failure to comply with this Section.

**22. OTHER AGREEMENTS** - Buyer may replace the PO with other forms of agreement such as, but not limited to, a master services agreement (an "Agreement"). Upon Buyer and Seller agreeing and executing an Agreement, in the event of a conflict between the terms and conditions of the Agreement and the terms and conditions herein, the terms and conditions of the Agreement shall prevail.

**23. CODE OF CONDUCT** - Seller shall not engage, actively or passively, not directly or indirectly in any form of bribery, in any violation of basic human rights of employees or any child labor. Moreover, Seller shall take responsibility for the health and safety of its employees. Seller shall comply with all

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applicable state, federal and municipal laws, rules and regulations arising out of or connected with the performance of the goods in the applicable jurisdiction(s) by Seller, its employees, directors, officers or agents, including, as appropriate, obtaining and maintaining any required work permits and visas for a project. Seller shall establish and maintain procedures and controls adequate to prevent its employment of any alien who is not legally eligible for such employment under the immigration laws of the U.S. Federal Government. Seller explicitly undertakes and guarantees that neither it, nor its employees, or any other parties it commissions will perform any unlawful acts or incite or aid and encourage any third parties to perform such acts. Unlawful acts include offering, granting, requesting or accepting illegal payments, benefits or other advantages for oneself or a third party. Buyer's Code of Conduct can be downloaded from the following web-link:

### [CODE OF CONDUCT](#)

Buyer may also provide a hardcopy or electronic copy of the Buyer's Code of Conduct to Seller against request. Seller confirms that it has been made aware of the Buyer's Code of Conduct. It undertakes to observe and comply with the principles stipulated in the Code of Conduct in its work. If Seller engages third parties to fulfill duties, it undertakes to also issue this Code of Conduct and binds them to comply with it. If Seller does not comply with the principles stipulated in Buyer's Code of Conduct, Buyer has the right to terminate the PO for cause.

**24. APPLICABLE LAW -** The laws of the State of South Carolina (without regard to conflict of laws principles) shall govern the legal obligations of the parties and the interpretation of this PO. Any legal suit, action, or proceeding relating to this PO must be instituted in the federal or state courts located in the State of South Carolina in each case located in the city of Jacksonville. The parties irrevocably submit regardless of domicile to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Seller shall comply with all applicable laws and regulations, by-laws and directives relating to the provision of goods and services hereunder, including without limitation all those relating to occupational health and safety, environmental protection, hazardous products and workers' safety insurance board requirements.

**25. SAFETY AND ENVIRONMENT (AS APPLICABLE)**

The Seller shall respect and comply with (i) the rules, regulations and practices required by the applicable construction health and safety and environmental legislation in the jurisdiction of the location of the site, and (ii) all safety precautions, policies and programs of the Buyer.

Seller shall be responsible, at its cost, for any and all impacts and or consequences arising from any hazardous substances brought to the site by the Seller or otherwise discharged from any equipment or vehicle owned or rented by the Seller, except that Seller shall not be responsible for any pre-existing hazardous substances.

**26. INSURANCE (AS APPLICABLE)**

The following insurance coverages are required under this Agreement: (a) **General Liability Insurance** in an amount of not less than five million dollars (\$5,000,000.00) in the name of the Seller, and such policy to be endorsed to name the Buyer as an Additional Insured, but only with respect to liability arising out of the services provided under the PO; (b) **Automobile Liability Insurance** in an amount of not less than one million dollars (\$1,000,000.00) covering owned, licensed and/or leased vehicles. Seller shall provide certificates of insurance, or certified copies acceptable to the Buyer, evidencing that the insurance required pursuant to this PO is in effect. Seller shall be responsible for all deductibles. All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the project site.