**CAPITAL PROJECT ORDER TERMS AND CONDITIONS – MANUFACTURER**

 1.0 The Goods

 Seller agrees to sell and Buyer agrees to buy the goods, articles, materials or services (the "Goods") described on the face of this Capital Project Order (the "CPO") for the price at the time and on the terms of payment shown on the face hereof. All rights of Buyer hereunder shall be exercised by, and all communications with Buyer shall be directed to the Buyer's representative identified on the face hereof.

 2.0 Integration

 This CPO and the provisions of any drawings, prints, plans, descriptions, specifications, samples, data and other documents expressly referred to herein and adopted by reference (hereinafter "Documents") constitute the entire agreement and supersede all proposals, negotiations and counterproposals. This CPO becomes effective when executed by Buyer and Seller. Buyer shall have no obligation to make payment to Seller before and unless a written CPO is executed by Buyer and Seller.

 3.0 Controlling Terms

 Buyer objects to the inclusion of any different or additional terms by Seller in Seller's acceptance of this CPO. If Seller includes or attaches any different or additional terms in Seller's purported acceptance, commences performance, or tenders the Goods, a contract of sale will result upon terms and conditions as stated herein, without inclusion of any different or additional terms and conditions.

 4.0 Prints, Drawings and Quality

 All Goods must strictly conform to the Documents referred to and incorporated herein and must be of the quality specified. No deviation or substitution is permitted without the prior written consent of Buyer. If no quality is specified, the Goods must be new and fit for their intended purpose.

 5.0 Warranty against Defects

 Seller warrants all Goods to be as described and specified herein and to be free of defects in design, materials and workmanship for a period of one year after being placed in service in Buyer's plant or structure. If Seller shall perform any engineering or design work with respect to the Goods, Seller warrants that such work shall be performed in accordance with the highest engineering and design standards, and without negligence. Seller further warrants the Goods as provided in Section 5 hereof and in any special warranty provision contained on the face of this CPO. Seller shall promptly repair or replace, without cost (including freight charges) to Buyer, any Goods found to be defective during the warranty period. If Seller fails to promptly cure the defective Goods, Buyer may repair or replace the Goods and hold Seller responsible for all reasonable costs thereof, including labor and freight, and for damages incurred by Buyer as a consequence of such failure. Seller shall not be liable for loss of us, loss of profit or other indirect or consequential damages resulting from breach of these warranties unless Seller fails promptly upon receipt of notice of defect from Buyer to cure defective Goods.

 6.0 Hazard Communication Standard

 If the Goods are subject to the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, 29 C.F.R. Part 1910 (the "Standard"), or to such other state hazard communication laws, regulations or standards as OSHA may have approved, Seller shall provide Buyer with a complete and accurate Material Safety Data Sheet for each of the Goods and shall label each of the Goods as required by the Standard. Seller's failure to supply such Sheet or to so-label the Goods shall be deemed to constitute Seller's warranty, representation and covenant that each of the Goods is exempt from the Standard.

 7.0 Warrants of Title

 Seller warrants that it has good and marketable title to the Goods, free and clear of any and all liens, restrictions, reservations security interests, claims, and encumbrances.

 8.0 Passage of Title

 If the Goods are standard items manufactured or sold by Seller, title shall pass to Buyer immediately upon identification to the CPO. If the Goods are to be fabricated especially for this CPO, title to the Goods and to all materials, inventory, work in progress and design data, and all contract rights related to such Goods shall vest in Buyer immediately upon identification to this CPO, subject only to Buyer's obligation to pay the price for such Goods or materials. Irrespective of vesting of title, Seller shall bear all risk of loss and shall insure or self-insure all Goods of Buyer's in its care, custody or control until delivered in good condition in accordance with the shipping instructions.

 9.0 Security for Advance Payments

 Advance payments by Buyer, if any, are to be applied to Seller's cost of labor, materials, production, procurement and delivery of the Goods to Buyer. If Buyer makes any advance payment to Seller, upon Buyer's request Seller shall execute a Security Agreement and Financing Statement (both in form satisfactory to Buyer) granting a security interest to Buyer in the raw materials and Goods in all states of fabrication or manufacture, including proceeds, that are purchased, manufactured, or otherwise obtained pursuant to this CPO. Seller shall pay promptly when due all bills for any labor, materials, equipment or services connected with the Goods supplied hereunder and if not promptly paid when due, Buyer may pay any such valid obligations of Seller and Seller shall immediately reimburse Buyer thereof.

 10.0 Price and Discounts

 The price set forth herein is not subject to escalation unless an escalation formula is expressly provided for on the face of this CPO. If a cash discount is provided for on the face of this CPO, the cash discount period begins when the Goods or invoice are received, whichever is later, provided the period will be extended during any delay caused by errors in invoicing or any good-faith dispute over the accuracy of the invoice.

 11.0 Changes

 Changes may be made by Buyer in the character or quantity of Goods to be furnished hereunder by written Change Order signed by the same authority executing this CPO for Buyer. The purchase price specified herein shall be equitably adjusted for any such change to the unit prices set forth herein if the change is in quantity, or by agreement, if the character of the Goods or other terms are changed so as to increase or decrease the cost to Seller. If no agreement is reached as to the amount of the price adjustment, the price shall be equitably adjusted to reflect the increased or decreased cost to Seller with a reasonable allocation of overhead and profit. Seller shall submit to Buyer satisfactory evidence from which adjustments based on cost can be determined.

 12.0 Rejection

 There shall be no substitutes or shipment of more or less than the quantity specified without prior written approval of Buyer. If Goods received do not conform to those ordered, or if more or less than the quantity ordered are shipped, Buyer may reject such shipment in whole or in part and require Seller to pick up and remove such rejected Goods at Seller's expense within ten (10) days after notice.

 13.0 Delay

 The Goods are required for use on a construction project requiring careful coordination of time of delivery of the Goods with performance of various features of the work on the project. Time is of the essence to this CPO. The delivery date shown herein is of critical importance to avoid substantial loss and inconvenience to various contractors and Buyer. In the event of delay or anticipated delay, from any cause, including force majeure, Seller shall immediately notify Buyer in writing of the delay or anticipated delay and shall undertake to shorten or make up the delay by all reasonable means. If such delay is from causes beyond the control of Seller that are listed in 14 below, the costs of overcoming delays or advancing deliveries shall be paid by Buyer to the extent such costs are attributable to action authorized by Buyer in advance. If the delay is from any cause not listed in 14 below, Seller shall be solely responsible for the costs of overcoming delays. Seller shall not be liable for loss of us, loss of profits, or other consequential damages, unless Seller fails to use diligence to deliver conforming Goods on schedule.

 14.0 Force Majeure

 Seller shall not be liable for any delay or failure to deliver any or all of the Goods covered by this CPO in the event of delay or failure caused by governmental regulations, labor disputes, strikes, wars, riots, insurrection, civil commotion, mobilization, explosion, fire, flood, accident, storm or any act of God, delays of common carriers or embargoes. Where only a part of Seller's capacity to perform is excused under this paragraph, Seller shall make a fair allocation of production and deliveries among the various customers then under contract for similar Goods during the period. Buyer shall not be liable for failure to take delivery of the Goods for any of the above causes, or other causes beyond Buyer's control if they render it commercially impracticable for Buyer to receive or use the Goods on a timely basis. Seller shall not be obligated to sell, nor Buyer obligated to purchase, at a later date that portion of the Goods Seller is unable to deliver or Buyer is unable to receive or use because of an of the aforementioned causes. No Goods are to be tendered by Seller after the expiration of the term specified in this CPO without the prior written consent of Buyer.

 15.0 Indemnity

 Contractor shall indemnify, save, and hold Buyer harmless from and against any and all loss, damage, expense (including attorneys' fees), responsibility, liability for injury or death of persons and/or loss, damage to, or destruction of property belonging to Buyer or others, or for claims therefor, whether or not Buyer has suffered actual loss, damage, or expense (Loss), where such Loss has resulted from, pertains to, or has arisen out of, Contractor's performance pursuant to the CPO. Contractor's indemnity obligation shall apply to any negligent acts, omissions to act, or willful misconduct, whether active or passive, on the part of Contractor, and shall extend to claims asserted after performance pursuant to the CPO. Contractor's indemnity obligations shall extend to the joint or concurrent negligence of Contractor and Buyer but shall not extend to Losses caused by Buyer's sole negligence or willful misconduct.

 This indemnity shall extend, without limitation, to the personal injury and/or death of Buyer's and Contractor's employees and employees of Contractor's agents, assigns, or subcontractors. To the extent necessary to indemnify and hold harmless Buyer hereunder, Contractor expressly waives any immunity or exemption from liability for the personal injury or death of Contractor's employees that may exist under, or any right to receive contribution from Buyer created by, the workers' compensation laws of the state of the Project Site. As used in this indemnity, acts referred to as being those of Buyer or Contractor, as the case may be, shall include acts of each such party's directors, officers, employees, agents, representatives, subcontractors or assigns. Except for claims of Loss caused by Buyer's sole negligence or misconduct, Contractor shall assume and pay the defense costs of any lawsuit or administrative proceeding brought against Buyer upon any claim of Loss and pay on behalf of Buyer the amount of any settlement that may be reached on behalf of, or judgment that may be entered against, Buyer in connection therewith.

 The parties intend that any such loss, damage, expense, responsibility, and/or liability for injury or death and/or loss, damage, or destruction, to which the foregoing indemnity does not, either by its terms or by operation of law, extend, nonetheless be compensated by and to the extent of the insurance coverage purchased or required to be purchased pursuant to the CPO.

 16.0 Sitework

 If Seller is to perform any work, including supervision of installation, at the site of construction or at the office or on property of Buyer, Seller shall carry at Seller's own expense: (a) Workers' Compensation Insurance providing statutory benefits covering its employees; (b) Commercial General Liability Insurance (Occurrence), with all standard coverages, and such additional coverages as may be requested by Buyer; and (c) Commercial Auto Liability Insurance for all vehicles employed by Seller for such work. The Commercial General Liability Insurance shall have a combined limit for bodily injury and party damage of not less than $5,000,000 per occurrence and $5,000,000 general aggregate, or such larger amounts and such additional coverage as may be required by Buyer. The Commercial Auto Liability Insurance shall have a combined single limit for bodily injury and property damage of not less than $1,000,000 per occurrence. Certificates of such coverage with thirty-day cancellation, expiration or amendment notice clause shall be submitted to Buyer prior to commencing work and shall name Buyer as an additional insured.

 17.0 Patents

 Seller warrants, represents and covenants that the Goods and the sale and use thereof do not infringe directly or indirectly on any patent, copyright or any trademark, and Seller agrees that Seller will, at its cost and expense, defend, indemnify and hold Buyer harmless from any loss, claims, demands and actions based on or arising from any infringement or alleged infringement thereof. In the event the Goods or any part thereof are infringing, Seller either shall obtain at its sole cost a license for Buyer to use such patent, copyright or trademark, or shall modify the Goods in a manner satisfactory to Buyer to exclude use of patented Goods or part thereof.

 18.0 Inspection and Expediting

 Buyer shall have the right to inspect and expedite the Goods in process of manufacture, in storage, in transit, and upon delivery to assure compliance with all terms and conditions of this CPO and the Documents. Buyer will be supplied, as needed, data, drawings, specifications, test results, quality documentation, schedules and other documents and information. The making or failure to make any inspection of, or payment for, the Goods shall in no way impair Buyer's right to reject nonconforming or defective equipment or items, nor be deemed to constitute acceptance by Buyer of the Goods, or affect in any way Seller's obligations under this CPO notwithstanding (1) Buyer's opportunity to inspect the Goods or items; or (2) Buyer's knowledge of the nonconformity or defect, its substantiality or the ease of discovery; or (3) Buyer's failure to earlier reject the Goods.

 19.0 Shipping

 Seller shall pay for packing, loading and draying, unless otherwise expressly set forth on the face of this CPO. Invoices and bills of lading showing full routing, car number, other customary data and this CPO number should be dated and mailed at the time of shipment and a separate invoice must be made for each destination, showing point and manner of shipment. Invoices bearing on transportation charges must show weight and rate. Each package or shipment must contain a memorandum showing Seller's name, contents of package and CPO number.

 20.0 American Standards

 Seller warrants that in furnishing the Goods, all applicable American Standards (including, but not limited to ANSI, ASME, ASTM and NEMA) have been complied with at the time of delivery. When Goods purchased hereunder are to be manufactured or produced outside the United States or its territories, Seller shall furnish Buyer with documents stating the foreign manufacturers' or producers' names and addresses containing written assurance of compliance with American standards.

 21.0 Laws

 Seller warrants, represents and covenants that the Goods supplied hereunder were manufactured, produced and sold in compliance with all applicable and current federal and state laws, rules and regulations.

 22.0 Final Acceptance

 On completion of the entire project of which the Goods are purchased to form a part, Seller shall cooperate with Buyer in carrying out any tests deemed necessary to determine the proper functioning and general performance of the various elements of the project and, at its own cost, shall make any adjustments and changes required to the Goods, to the end that an efficient and fully operative project will result. Final acceptance by Buyer will be conditional upon fulfillment of this requirement.

 23.0 Cancellation

 This CPO is subject to cancellation at the convenience of Buyer. Where the CPO is canceled for the convenience of Buyer, Seller shall be paid: (1) the unit price for each item of Goods properly furnished and accepted prior to cancellation; plus (2) the cost of Goods in process of manufacture, including unused materials and castings, which are identified to and being manufactured or fabricated specially for this CPO; plus (3) other direct costs of said specialized Goods, including actual cancellation charges of Seller's suppliers and subcontractors but in no event shall Buyer be liable for any amount in connection with nonspecialized Goods not accepted by Buyer nor shall the amount payable by Buyer exceed the total contract price shown on the face of this CPO less any payments previously made. Seller shall invoice for the cancellation charges, and Buyer shall pay the invoice within ninety days.

 24.0 Termination for Cause

 If in the event Seller shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or if a receiver shall be appointed on account of Seller's insolvency, or in the event Seller does not correct or, if immediate correction is not possible, commence and diligently continue action to correct, any default of Seller to comply with any of the provisions or requirements of this Agreement within ten days after being notified in writing of such default by Buyer, Buyer may, by written notice to Seller, without prejudice to any other rights or remedies which Buyer may have, terminate further performance by Seller of this Agreement. In the event of such termination, Buyer may complete the performance of this Agreement by such means as Buyer selects, and Seller shall be responsible for any additional costs incurred by Buyer in so doing. Any amounts due Seller for Equipment delivered by Seller in full compliance with the terms of this Agreement prior to such termination shall be subject to setoff of Buyer's additional costs of completing the Agreement and other damages incurred by Buyer as a result of Seller's default. Waiver by Buyer of any default of Seller shall not be considered to be a waiver by Buyer of any provision of this Agreement or of any subsequent default by Seller.

 25.0 Taxes

 Any retailer's occupation tax, use tax, or sales tax imposed by any governmental authority, on or measured by any transaction between Seller and Buyer shall be paid by Buyer in addition to the price set forth herein. Seller shall cooperate with Buyer in opposing the imposition of taxes on any article covered by this CPO, the legality of which is questioned by Buyer, and in securing any abatement or refund thereof sought by Buyer.

 26.0 Confidentiality

 Seller shall treat as confidential all data and information furnished by

Buyer that may be of a proprietary nature, and Seller shall not knowingly divulge the same to third parties without Buyer's written consent until such data and information are public knowledge. If revelation of such information to third parties is necessary to assure proper execution of this CPO, Seller shall require such third parties to hold such information in strictest confidence.

 27.0 Assignment

 This CPO and money due hereunder may not be assigned without previous consent of Buyer which may be denied without reason stated. If consent is granted, such assignment shall not increase or alter Buyer's obligations nor diminish or alter Buyer's rights. Any attempted assignment without such consent shall be void.

 28.0 Governing Law

 This CPO shall be interpreted and enforced under the laws of the state in which this CPO is initiated.

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