MATERIAL ONLY TERMS AND CONDITIONS

"Purchaser" is defined as Dynamic Systems (DSI), LLC (and may also be referred to herein as "Dynamics", "DSI", "Purchaser" or "Contractor"). "Seller" is defined as the party to the Purchase Order ("PO") other than DSI (and may also be referred to herein as "Seller" or "Subcontractor").

1. Shipping instructions, if not shown on the face of the PO, will be furnished later. If the materials and equipment ("Goods") purchased are forwarded FOB shipping point, Seller shall be liable for excess charges resulting from failure to ship the Goods utilizing the least expensive method or as instructed by Purchaser. Goods delivered which do not comply with the materials covered by the PO or which exceed the quantity ordered will be returned at Seller's expense.
2. Prices stated in the PO are firm, not subject to escalation, and include all federal, state and local taxes including, but not limited to, sales taxes, duties and surcharges unless otherwise stated in the PO. The amount payable under this PO shall not be subject to adjustment by reason of any increase or decrease in labor rates, freight costs, tax rates, cost of materials or equipment, any other costs, or shortages or unavailability of materials. Seller accepts the sole risk that such costs are subject to change and are not predictable, and the sole risk resulting from the lack of availability or shortages of materials.
3. Seller warrants that the use or sale by the Purchaser of the Goods and the use of such Goods by the Owner of the Project will not constitute an infringement of any patent or patent application, and Seller agrees to indemnify, defend and hold Purchase and the Owner of the Project harmless from and against any and all patent infringement claims resulting from such use and/or sale.
4. Time is of the essence in the performance of Seller's obligations under this PO. Seller shall deliver the Goods on the date specified by this PO or, if no date is specified, in accordance with the schedule established by Purchaser. Should Purchaser delay Seller's delivery of the Goods or the production thereof, Seller's sole and exclusive remedy against Purchaser shall be an extension of time for completion equal to the delay caused, and then only if written claim for delay shall be delivered to Purchaser within forty-eight (48) hours from the commencement of such delay. Seller hereby waives and releases Purchaser from any and all claims and causes of action against Purchaser for damages, costs or expenses arising out of delays, hindrances or interruptions caused by Purchaser, except for a claim for an extension of time.
5. All shipments shall be subject to final inspection by Purchaser after receipt by Purchaser at destination. Purchaser reserves the right to reject and refuse acceptance of Goods which are not in accordance with the terms of this PO. Payment shall not be deemed an acceptance of any Goods that are not in conformance with the requirements of the PO. Purchaser shall have the right to reject any Goods supplied under this Purchaser Order at any time, even after acceptance, if it is subsequently determined that the Goods are defective, do not comply with terms of this PO, or are rejected by the Owner or Architect/Engineer for the Project.
6. Purchaser shall have the right, at any time, by written notice to Seller, without cause of default by Seller, to cancel this PO, in whole or in part. In such event, Purchaser shall be responsible only for the cost of Seller's finished Goods or Goods in progress which cannot be otherwise utilized or sold, and Purchaser shall not be responsible for any lost profits on any of the Goods not supplied.
7. All Goods furnished under this PO shall be new and of first quality, unless otherwise specified in the PO, and Seller warrants all such Goods to be sound and merchantable, and to be fit and suitable for the particular purpose for which they are purchased. Seller guarantees and warrants that all of the Goods furnished under this PO shall be in strict accordance with the Contract Documents for the Project on which the Goods will be utilized, and for that period of time as called for by such Contract Documents after acceptance of the Goods by the Owner or, if no time is specified, for a period of one (1) year after the date of the substantial completion of the Project, and such warranty shall include a warranty that the Goods shall be free from defects in workmanship and materials, and shall develop ratings, capacities and characteristics specified. Seller will test and, if necessary, shall remove, replace and/or repair at its own expense and at the convenience of the Purchaser and the Owner of the Project, any such non-conforming or defective Goods.
8. The terms and provisions of this PO shall be governed and construed in accordance with the laws of the State where the Project is located. Exclusive jurisdiction and venue for any action pertaining to this PO shall be in the state or federal courts, whichever is applicable, in the county in which the Project is located. Seller represents to Purchaser that Seller shall comply with all applicable federal, state or local laws, codes and regulations pertaining to the Goods supplied by Seller under the terms of this PO.
9. At Purchaser's sole option and discretion, all claims or disputes arising out of or relating to this PO or the breach thereof may be decided by binding arbitration in accordance with Construction Industry Arbitration Rules of the American Arbitration Association, with the arbitration to occur in the County/State in which the Project is located. Seller consents to consolidation of any arbitration hereunder with arbitration proceedings involving Purchaser and any other parties involving a common question of law or fact.
10. Should Seller, at any time in the opinion of Purchaser, refuse, neglect or fail to properly perform its obligations under this PO, or fail to properly and timely supply the Goods for any reason, or fail in any respect to perform its obligations with dispatch and diligence, or become insolvent, or should any bankruptcy or receivership petition be filed by or against Seller, Purchaser, in addition to all other remedies available to Purchaser under applicable law, after three (3) calendar days written notice to Seller of such failure, refusal, neglect or event, may stop all payments to the Seller, may make the necessary arrangements to perform or have other vendors perform the work or supply the Goods required to be supplied by Seller under this PO, and deduct the cost thereof from any amounts due or thereafter becoming due to Seller under this PO, and/or Purchaser may also terminate Seller's right to proceed under this PO, and may also pursue any and all other remedies available to it at law or in equity, and shall be entitled to recover any costs, expenses or damages incurred by Purchaser as a result of such failure, refusal, neglect or event.
11. Payments by Purchaser to Seller under this PO are expressly contingent upon and subject to the Owner's acceptance of the Goods provided by the Seller, and Purchaser's receipt of payment from the party with whom the Purchaser has contracted to supply the Goods provided under this PO. Seller agrees to accept and assume the risk of non-payment if Purchaser is not paid for the Goods by the party to which Purchaser is providing the Goods. All amounts payable hereunder by Purchaser or by Seller shall be payable at Purchaser's office in the State where the Project is located.
12. **TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER EXPRESSLY AGREES TO INDEMNIFY, DEFEND (AT SELLER'S EXPENSE, AND WITH COUNSEL ACCEPTABLE TO PURCHASER), AND HOLD HARMLESS PURCHASER, THE OWNER OF THE PROJECT, ANY PERSON OR ENTITY WITH WHOM THE PURCHASER HAS CONTRACTED TO SUPPLY THE GOODS SUPPLIED BY SELLER UNDER THIS PO, AND ANY OTHER PARTIES WHICH PURCHASER HAS AGREED TO INDEMNIFY IN THE CONTRACT DOCUMENTS PERTAINING TO THE PROJECT, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS, AFFILIATES AND ASSIGNS (HEREINAFTER REFERRED TO COLLECTIVELY AS THE "INDEMNITEES") FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LOSSES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FINES, PENALTIES AND EXPENSES OF ANY KIND WHATSOEVER INCLUDING, WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION AND ARBITRATION, COURT COSTS AND ATTORNEYS' FEES, ARISING ON ACCOUNT OF OR IN CONNECTION WITH INJURIES TO OR THE DEATH OF ANY PERSON, OR ANY AND ALL DAMAGES TO PROPERTY, INCLUDING LOSS OF USE, REGARDLESS OF POSSESSION OR OWNERSHIP AND REGARDLESS OF WHETHER CAUSED IN PART BY REASON OF THE ACTS OR OMISSIONS OF AN INDEMNITEE WHICH ARISE FROM THE GOODS SUPPLIED UNDER THIS PO, ANY ACTS, ERRORS OR OMISSIONS OF THE SELLER, ANY PRODUCTS LIABILITY CLAIMS, OR ANY FAILURE OF THE SELLER TO FULFILL ANY OF ITS OBLIGATIONS UNDER THIS PO. THE FOREGOING DEFENSE AND INDEMNITY PROVISIONS DO NOT COVER INJURIES, DEATH OR PROPERTY DAMAGE CAUSED BY THE SOLE NEGLIGENCE OF ANY INDEMNITEE. THE DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS PO SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE SELLER UNDER WORKMEN'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS, AND SHALL EXTEND TO AND INCLUDE ANY ACTIONS BROUGHT BY OR IN THE NAME OF ANY EMPLOYEE OF THE SELLER OR ANY THIRD PARTY TO WHOM SELLER MAY SUBLET A PART OF THE WORK. SELLER SHALL FURTHER INDEMNITY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS ASSERTED BY ANY PARTIES CLAIMING TO BE DUE OR OWING ANY SUMS OF MONEY FOR LABOR PERFORMED, SERVICES RENDERED, OR GOODS SUPPLIED IN CONNECTION WITH THE PERFORMANCE OF THE SELLER'S OBLIGATIONS UNDER THIS PO.**
13. No modification of this PO shall be effective unless agreed to, in writing, signed by authorized representative of the Purchaser. This PO contains the entire agreement of the parties, and all prior representations, proposals, quotations or agreements, whether written or verbal, are superseded hereby. Any reference to Seller's proposal or quotation does not imply acceptance of any term or condition contained in such proposal or quotation. Any additional or different terms and conditions proposed by Seller which are not specifically set forth in this PO are being rejected. Notice is hereby given pursuant to the Uniform Commercial Code of the State where the Project is located, and any applicable statute or code ("Code") of Purchaser's objection to all terms and conditions in addition to or different from the terms and conditions of this PO contained in any written acceptance or order confirmation which may be issued by Seller.
14. Purchaser and Seller agree that: (a) any proposal, offer, counteroffer, or terms and conditions previously submitted by Seller to Purchaser regarding the Goods (i) are all rejected by both Purchaser and Seller and (ii) this PO is a counteroffer to such proposal, offer, counteroffer, or terms and conditions; (b) Purchaser's payment to Seller is expressly conditioned upon Seller's acceptance of Purchaser's terms and conditions as contained in this PO; (c) Purchaser's receipt of Goods from Seller does not constitute acceptance of such Goods; and (d) notwithstanding (i) any proposal, offer, counteroffer, or terms and conditions that were previously submitted by Seller to Purchaser; or (ii) Purchaser's receipt the Goods or Purchaser's, Prime Contractor's or Owner's acceptance of the Goods, the only terms and conditions applicable to the Goods are contained herein.