TERMS AND CONDITIONS

1. Shipping instructions, if not shown on the face of the Purchase Order, 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 Purchase Order or which exceed the quantity ordered will be returned at Seller's expense.
2. Prices stated in the Purchase Order 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 Purchase Order. The amount payable under this Purchase Order 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 Purchase Order. Seller shall deliver the Goods on the date specified by this Purchase Order 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 Purchase Order. Payment shall not be deemed an acceptance of any Goods that are not in conformance with the requirements of the Purchase Order. 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 Purchase Order, 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 Purchase Order, 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 Purchase Order shall be new and of first quality, unless otherwise specified in the Purchase Order, 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 Purchase Order 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 Purchase Order 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 Purchase Order 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 Purchase Order.
9. At Purchaser's sole option and discretion, all claims or disputes arising out of or relating to this Purchase Order 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 Purchase Order, 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 Purchase Order, and deduct the cost thereof from any amounts due or thereafter becoming due to Seller under this Purchase Order, and/or Purchaser may also terminate Seller's right to proceed under this Purchase Order, 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 Purchase Order 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 Purchase Order. 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 or by reason of any breach hereof to Seller by Purchaser, or by Seller to Purchaser, 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 PURCHASE ORDER, 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 PURCHASE ORDER, 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 PURCHASE ORDER. 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 PURCHASE ORDER 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 PURCHASE ORDER.**
13. No modification of this Purchase Order shall be effective unless agreed to, in writing, signed by authorized representative of the Purchaser. This Purchase Order 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 Purchase Order 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 to and different from the terms and conditions of this Purchase Order 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 Purchase Order 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 Purchase Order; (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.

IF APPLICABLE, THE BELOW ADDITIONAL TERMS SHALL APPLY ONLY TO ON-SITE SERVICES PERFORMED UNDER THIS PURCHASE ORDER:

15. **SCOPE OF SERVICES:** Seller (as defined on face of Purchase Order and further defined to include Seller's subcontractors of every tier ("Seller")) shall furnish and pay for all labor and services to be performed on the Project site which are necessary or incidentally required for the completion of this Purchase Order ("Services"). Seller shall furnish and pay for all materials, tools and equipment necessary to perform the Services. Seller shall comply with all federal, state, county, and municipal or other public laws, codes, regulations, rule, and ordinances applicable to the Services ("Laws").
16. **SAFETY:** Seller shall give all notices required by and comply with all Laws bearing on the safety of persons or property or their protection from damage, injury, or loss. Seller shall comply with the stated Safety Policies and Program of Purchaser, understanding that failure of any Seller's employee to comply could result in Purchaser requiring the Seller to remove the employee from the Project site. In such event, Seller understands that it will be responsible for providing replacement employee(s). A copy of Purchaser's Safety Policies and Program are available upon written request to Purchaser's Project Manager.
17. **WARRANTY:** Seller expressly warrants and guarantees to the Owner, Prime Contractor, Architect/Engineer and Purchaser that: (a) all Services shall be good and workmanlike and shall strictly conform to the requirements of the Contract Documents and Services not conforming, including substitutions not properly approved and authorized, will be considered defective; and (b) Seller shall promptly perform all required corrective or remedial services and shall execute and deliver to Purchaser such other and further documents required by the Contract Documents or reasonably requested by Purchaser to further evidence Seller's warranties and guarantees. Seller shall be responsible for full performance of all guaranties and warranties required hereunder regardless of whether any such separate warranties and guaranties are actually delivered by Seller or any conflicting provisions in such guaranties and warranties. These warranties and guarantees shall be in addition to and not in limitation of any other warranties or remedies required under the Contract Documents. In the event this Purchase Order is terminated for any reason, Seller's warranties, guarantees, and indemnities with respect to the Service performed through the date of termination shall survive such termination and be in full force and effect for the period of time prescribed by the Contract Documents, this Purchase Order or law, whichever is longer.
18. **INSURANCE:** The Seller agrees to provide insurance, with insurance companies satisfactory to Purchaser with an A.M. Best Company Rating of A-7, or better, and warrants that the requirements shall be satisfied and the policies shall be maintained until the expiration of any applicable warranty period required herein and in the Contract Documents, and until Purchaser no longer has any liability for the Seller's Services, whichever period is longer.

    - The "Indemnitees," as defined below, shall be listed as additional insureds utilizing the ISO CG 2010 07/04 & CG 2037 07/04 additional insured endorsement or equivalent endorsement and any other applicable endorsement to the Commercial General Liability, Automobile Liability, and Umbrella Liability insurance policies that the Seller must maintain under this Purchase Order as stated below and necessary to provide the coverage's stated herein. These policies shall be endorsed to provide that coverage shall be primary and noncontributory over any other insurance insuring Purchaser.

    - The coverage for the insurance listed above shall be as follows, with the limits not less than those set out in the Contract Documents, and in no event shall the limits be less than Purchaser is required to carry under the Contract Documents.

    (1) Commercial General Liability on an Occurrence Basis
    (2) Workers Compensation and Employer Liability insurance
    (3) Automobile Liability
    (4) Umbrella Liability

    - A copy of the insurance certificate will be furnished to the Purchaser. Failure to provide satisfactory proof shall give Purchaser the absolute right to cancel this Purchase Order.

    - If any insurance coverage required above is or is to be canceled or changed in any way so as not to satisfy the requirements above, Seller shall provide, or Seller shall require its insurer to provide, notice in writing to Purchaser and its agent thirty (30) days in advance of cancellation or change.

    - Seller agrees that no act or omission by the Purchaser shall act as a waiver of the required insurance coverage. The workers compensation, comprehensive general liability, automobile liability and umbrellas liability policies shall be endorsed so that the insurer will have no right of subrogation against the Purchaser.

    - The Seller's obtaining or failure to obtain the required insurance shall in no way relieve the Seller from its indemnity obligation. Further the Seller's indemnity obligations shall extend to the full amount of any damage, loss or liability described in the indemnity provision of this Purchase Order, and the Seller's indemnity obligations shall not be limited to the amount of insurance obtained or required.

    - If applicable, Seller must comply with all CIP requirements that apply to Seller per the CIP Manual. If Seller is excluded and therefore NOT required to enroll in the CIP Program; Seller must still comply with all the CIP requirements that apply to an excluded Seller.
19. **Indemnity Provision - NEW YORK**

    TO THE FULLEST EXTENT PERMITTED BY LAW, BUT THE INDEMNIFICATION PROVISIONS HEREUNDER IN NO WAY BEING CONSTRUED TO IMPOSE UPON SELLER ANY CONTRACTUAL OBLIGATIONS IN CONTRAVENTION OF LIMITATIONS IMPOSED BY LAW:

    (A) SELLER HEREBY AGREES TO HOLD HARMLESS, DEFEND AND INDEMNIFY PURCHASER AND OWNER AGAINST ANY AND ALL CLAIMS FOR DAMAGES, INJURY, LOSS OR HARM OF ANY NATURE WHATSOEVER WHICH ARE RELATED TO THE WORK, WHETHER PERFORMED DIRECTLY BY SELLER OR OTHERS, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES, INJURY, LOSS OR HARM CAUSED OR CLAIMED TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF OWNER OR BY THE NEGLIGENCE OF OTHERS, EXCEPT TO THE EXTENT THAT SUCH INDEMNIFICATION WOULD BE PROHIBITED BY N.Y. GENERAL OBLIGATIONS LAW § 5-322.1. NOTWITHSTANDING ANY PROVISION OF THIS PURCHASE ORDER TO THE CONTRARY, SELLER SHALL OBTAIN AT ITS SOLE EXPENSE INSURANCE COVERAGE AS PROVIDED IN PARAGRAPH 17 AND ALL SUCH INSURANCE POLICIES SHALL NAME PURCHASER AND OWNER AS ADDITIONAL INSUREDS.

    (B) SELLER FURTHER AGREES TO HOLD PURCHASER AND OWNER HARMLESS FROM THE FILING OF ANY LIEN ARISING OUT OF ANY WORK, LABOR, SERVICES AND/OR MATERIALS PERFORMED OR PROVIDED IN CONNECTION WITH THE PURCHASE ORDER, WHETHER BY SELLER OR BY OTHERS. IN THE EVENT THAT ANY SUCH LIEN IS FILED, SELLER SHALL IMMEDIATELY SATISFY SUCH LIEN AND CAUSE IT TO BE RELEASED, OR SHALL REIMBURSE PURCHASER AND OWNER FOR ANY AND ALL COSTS OF SAME, INCLUDING ATTORNEYS' FEES.

    (C) THE PROVISIONS OF THIS PARAGRAPH 18 SHALL BIND THE SUCCESSORS AND ASSIGNS OF THE SELLER AND SHALL INURE TO THE BENEFIT OF THE SUCCESSORS, ASSIGNS, AFFILIATES, AGENT AND EMPLOYEES OF THE PURCHASER.
20. **Hierarchy and Authority:** To the extent that the terms and conditions added by these Additional Terms are inconsistent with any other terms and conditions of the Purchase Order which are applicable to the Services, the terms and conditions of these Additional Terms shall govern.
21. **Acknowledgement:** Each person signing this Purchase Order represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Purchase Order and that it is a legal agreement binding on such party and enforceable in accordance with its terms and conditions and APPROVED and AGREED to by the respective signatories effective as of the Purchase Order Date.