

PURCHASE CONTRACT TERMS AND CONDITIONS

- 1) Buyer agrees to pay Seller the sum set forth on the face of this Purchase Contract for furnishing the material listed, providing such material is satisfactory to the Architect-Engineer and Buyer. Partial payments will be made each month in an amount equal to the value of materials received, not to exceed the amount paid by the Owner for the above work on the last month's estimate, less any amount of retainage indicated on the face of this Purchase Contract. Said monthly payments will be due and payable to Seller within ten (10) days after receipt by Buyer of its monthly payments from the Owner for materials furnished by the Seller. Partial payment to Seller shall not be construed as approval or acceptance of the part of Seller's material, either by Buyer, Architect-Engineer or Owner. If final acceptance of Seller's material can be obtained prior to final acceptance of the entire project by the Owner, all monies due Seller will be paid within ten (10) days of receipt of the same by Buyer from the Owner; otherwise, said payment will be made within ten (10) days from receipt of final payment by Buyer from the Owner. Seller agrees to furnish any waivers, warranties, guarantees, affidavits, or any other documents required by the Owner or Buyer within ten (10) days of notification of need for the same. If such documents are not furnished within ten (10) days, Buyer may withhold payments currently due until such time as the documents are received.
- 2) Buyer may deduct from any amount due or to become due Seller under this Purchase Contract any sum and/or sums owing by Seller to Buyer as a result of Seller's default under this Purchase Contract or any other contract or agreement between Buyer and Seller. If there is any breach by Seller of any provision or obligation of this Purchase Contract, or if there is any assertion by other parties of any claim or lien against Buyer, the Owner or the premises arising out of Seller's performance of this Purchase Contract, then Buyer shall have the right to retain out of any payments due of to become due to Seller an amount sufficient to completely protect Buyer from any and all losses, damages, or expenses therefrom, until Seller has remedied the situation to the satisfaction of Buyer.
- 3) To the fullest extent not prohibited by law, Seller shall indemnify, defend and hold harmless Buyer, Owner and their respective officers, directors and employees from and against any loss, damage, liability, costs of litigation or arbitration, attorneys' fees and any other expenses arising out of any of the following: (a) claim or suit for infringement or patents, trademarks, trade names and/or brands, relating to items described; (b) any claim or suit arising out of Seller's performance of this Purchase Contract; or (c) any claim or suit arising out of the alleged negligence of Seller. In addition, Seller shall also assume the defense of any and all suits and to pay any and all costs relating to the foregoing.
- 4) Seller agrees not to assign and/or substitute any part of this Purchase Contract without the prior written consent of Buyer, which may be withheld in Buyer's sole discretion.
- 5) This Purchase Contract is executed between Buyer and Seller and is governed by, and shall be interpreted in accordance with, the laws of the State of Ohio.
- 6) Seller guarantees all items furnished under this Purchase Contract will conform to specifications, samples and/or instructions issued and all items will be first class quality, free from defect and suitable for their intended purpose. Any requests for substitution must be made within fourteen (14) days of receipt of this Purchase Contract and will be subject to Buyer's approval, which may be withheld in Buyer's sole discretion.
- 7) All drawing transmittals must be in the number of copies indicated on the face of this Purchase Contract. This will allow one (1) copy to be returned to Seller. All transmittals must carry the specification paragraph number of item being submitted. Initial submittal of drawings must be made within two (2) weeks of receipt of drawings by Seller. All transmittals must be delivered to Buyer's office.
- 8) It is understood and agreed that the amounts established as compensation for the materials furnished under this Purchase Contract are firm for the life of this Purchase Contract and not subject to escalation in any form and may be amended only by properly executed change order signed by Buyer and Seller.
- 9) Buyer reserves the right, by means of properly executed change order, and acknowledge by an authorized agent of the Seller, to amend and /or modify the drawings, designs and/or specifications, delivery or shipping schedules and quantities ordered. Should any change increase or decrease the cost or time required for performance of this Purchase Contract, an equitable adjustment may be requested by Seller. If the parties fail to agree upon the equitable adjustment to be made, and the changes were initiated by the Owner, the Architect-Engineer's decisions will be binding on both parties; if the changes originated from Buyer, the matter shall be subject to dispute resolution in accordance with paragraph 10 hereof. Nothing provided in this clause shall excuse Seller from complying with the change.
- 10) If any claim, dispute or other matter in question arises between Buyer and Seller with respect to this Purchase Contract and the parties have not resolved such claim, dispute or other matter, then, at the sole discretion of Buyer, such claim, dispute or other matter shall be decided by arbitration in accordance with the then-prevailing Construction Industry Arbitration Rules of the American Arbitration Association. Alternatively, Buyer, in its sole discretion, may require Seller to submit such claim, dispute or other matter to the dispute resolution procedures set forth in the contract between Owner and Buyer with respect to the project to which this Purchase Contract pertains, and such claim, dispute or other matter may, as Buyer deems appropriate, be consolidated with other claims involving common question of law or fact. If no election is made by Buyer pursuant to the preceding sentences, then the unresolved claim, dispute or other matter shall be resolved by litigation in a court of competent jurisdiction. The following requirements shall apply to any arbitration: (a) the decision made by the arbitrator(s) shall be final and binding upon the parties, and judgment may be entered upon such decision in any court having jurisdiction; (b) the arbitration shall be conducted in Toledo, Ohio; (c) any arbitration may include, in the Buyer's discretion, by consolidation, joinder or otherwise, any person or entity not a party to this Purchase Contract if that person or entity is involved in a common question of law or fact, the presence of such person or entity is required if complete relief is to be accorded in the arbitration, and the interest of that person or entity is not insubstantial; (d) all claims that are related to or are dependent upon each other shall be heard by the same arbitrator(s); and (e) Buyer shall have the right, at its sole option, to defer the arbitration proceedings until the completion of the project, at which time all pending disputes for which arbitration has been demanded pursuant to this paragraph may be heard in a single proceeding.
- 11) The Purchase Contract is subject to modification and/or cancellation at the discretion of Buyer in the event of fire, earthquake, flood, strikes, acts of God and/or any other cause beyond the reasonable control of Buyer. Whenever an actual or potential labor dispute will delay, or threaten to delay the timely performance of this Purchase Contract, Seller shall immediately give notice in writing, including all relevant information, to Buyer.
- 12) Buyer shall have the right to cancel this Purchase Contract or to reduce the quantities of goods to be delivered in the event of any proceedings by or against Seller, voluntarily or otherwise, in Bankruptcy, insolvency, or due to the appointment of a Receiver or Trustee, or an assignment for the benefit of creditors of the property of Seller, or in the event of a Breach by Seller, of any terms hereof, including warranties made in connection with items ordered.
- 13) Original Bills of Lading, or shipping information required, shall be promptly forwarded by Seller on the date of shipment. Items arriving without notice having been advanced will be held until such information is furnished and all demurrage accrued shall be the responsibility of Seller.
- 14) Unless otherwise specified, all packing and cartage charges, including sales tax, shall be assumed, and paid, by Seller and will not be allowed by Buyer. Seller is responsible for any and all charges and costs as a result of Buyer's receipt of defective material.
- 15) Shipments or deliveries shall be made at the time and manner specified. If to the contrary, Buyer reserves the right to cancel or to buy elsewhere. On all shipments Seller shall promptly notify Buyer with respect to shipping point, initial carrier, routing and ascertain deliveries will be made during working hours.
- 16) Discount terms, when applicable, are to be predicated upon the assumption invoices will be received by Buyer within three (3) days from date of shipment, otherwise the discount is to be calculated from the date the invoice is received.
- 17) It is agreed, the Terms and Conditions of this Purchase Contract are fully covered in the foregoing and any oral, or written statements made by either party, or agents claiming to represent either party, not set forth herein, are not binding on either party and are not to be considered as part of this Purchase Contract.
- 18) Buyer agrees to conform to all Federal, State and Local Laws pertaining to Safety, Equal Employment Opportunity, or Non-Discrimination whether or not so stated in the Purchase Contract. Seller shall follow all safety policies in place at the project site where the materials are to be delivered.
- 19) Seller shall carry and maintain, at its own cost, the following insurance coverages: (a) worker's compensation and employer's liability insurance to the full extent by applicable laws; (b) commercial general liability coverage, naming Buyer and Owner as additional insureds, with limits of not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate; (c) business automobile liability insurance covering owned, non-owned and leased vehicles with limits not less than \$1,000,000 per person and \$1,000,000 annual aggregate; and (d) to the extent licensed engineering or licensed design services are required as part of the services or goods being provided under this Purchase Contract, professional liability insurance with limits of not less than \$500,000 per claim and \$1,000,000 annual aggregate. Seller shall maintain such coverages for a period of at least 3 years after the date of Seller's completion of the services required by this Purchase Contract. Seller shall provide Buyer with certificates of insurance evidencing the coverages and amounts set forth in this paragraph (including certificates evidencing annual renewal of such policies). Seller's certificate of insurance shall contain a provision that the coverage afforded under policy(s) will not be canceled at least 30 days prior written notice to Buyer.