

SUBCONTRACTOR PURCHASE ORDER TERMS & CONDITIONS

Revised and Effective as of January 1, 2019

ARTICLE 1. COMMENCEMENT AND PROGRESS OF WORK

1. Time is of the essence this Agreement and Subcontractor agrees to comply with and perform the Work of this Subcontract to the full and complete satisfaction of the Contractor and the Owner, according to the requirements of the Contractor's construction schedule as Contractor may from time to time determine and submit to the Subcontractor. Within three (3) calendar days after being notified by Contractor, Subcontractor shall commence actual construction Work hereunder at such point or points at the site of the Work, or to deliver such needed materials and supplies as and when required to such storage or Work areas, or both, as Contractor may designate and to thereafter continue diligently in the performance of the Work.
2. The Purchase Order issued to Subcontractor operates as an offer and constitutes the entire terms of the contract and shall not be modified except by mutual written agreement. The order of precedence of Purchase Order documents shall be Purchase Order, Subcontractor Terms & Conditions, Specifications, Instructions to Subcontractor, general standards and applicable law. Subcontractor's acceptance of the Purchase Order may be made by Subcontractor by (i) signing the acknowledgment copy in the attached Purchase Order set and returning same to Contractor, (ii) making shipment, or (iii) Subcontractor's commencement of work on or purchase of material for performance of this Purchase Order, or (iv) any other conduct by Subcontractor evidencing the existence of the Purchase Order. This Purchase Order is subject to, and expressly conditioned upon, Subcontractor's unconditional acceptance thereof in its entirety. **UNLESS SPECIFICALLY AGREED TO IN WRITING BY CONTRACTOR, OR SPECIFICALLY REFERENCED IN THIS PURCHASE ORDER, CONTRACTOR'S TERMS AND CONDITIONS REPRESENT THE ONLY TERMS AND CONDITIONS APPLICABLE TO THIS ORDER NOTWITHSTANDING ANY STATEMENTS TO THE CONTRARY WHICH MAY BE CONTAINED IN SUBCONTRACTOR'S WRITTEN PROPOSAL OR ACKNOWLEDGMENT OR ANY OTHER DOCUMENT PROVIDED BY SUBCONTRACTOR, WHICH ARE HEREBY OBJECTED TO BY CONTRACTOR. ANY CONFLICTING TERMS AND CONDITIONS IN ANY DOCUMENT GENERATED BY SUBCONTRACTOR ARE REJECTED BY CONTRACTOR AND WILL BE DISREGARDED IN FAVOR OF THE CONTRACTOR TERMS AND CONDITIONS.**
3. Upon request, the Subcontractor shall prepare and submit to the Contractor for approval a practicable progress schedule in the form requested to meet the dates as shown by Contractor's current construction schedule and showing the order in which Subcontractor proposes to carry on the Work and the date on which it will start the salient features (including drawings, procurement of materials, plant and equipment and the contemplated dates for completing the same). The Subcontractor shall enter on the schedule the actual progress at the end of each month or at such intervals as directed by Contractor, and submit two (2) copies to the Contractor's Project representative.
4. Subcontractor shall keep Contractor fully and formally advised at all times of any pending or possible delays in deliveries and/or Work accomplished which could impact immediate or long range scheduling of this Project.
5. If the Subcontractor falls behind the progress schedule, the Subcontractor shall take such steps as may be necessary to improve the subcontract progress, and Contractor may require Subcontractor to increase the number of shifts and/or overtime operations, days of Work, and/or increase equipment and/or tools being used, and to submit for approval such supplementary schedule or schedules as may be necessary to demonstrate the manner in which the agreed rate of progress will be regained.
6. The Subcontractor agrees to submit all shop or fabrication drawings, design, and performance data, tests, samples, templates, operating and/or maintenance manuals; together with any and all other data related to the materials, methods, and equipment used or proposed for use in the performance of this Subcontract promptly and/or as directed by Contractor or required by the General Contract, and in sufficient number to provide adequate information to all parties requiring same. Approval of any of the foregoing by the Contractor, the Owner or the Owner's Representative shall under no circumstances alter the requirements of the subcontract documents for quality, quantity, finish dimension, design, and configuration; nor shall such approval constitute acceptance by the Contractor of any method, material, or equipment not ultimately acceptable to the Owner or the Owner's Representative.
7. In the event any acts or omissions of Subcontractor delay Contractor in meeting its own construction schedule or that of any other subcontractor in the performance of the Work under the General Contract resulting in penalties, liabilities or damages under the General Contract, Subcontractor agrees to indemnify and hold Contractor harmless from any penalties, liabilities, and/or damages, and to promptly pay to Contractor any such costs, penalties, liabilities or damages so incurred.
8. Errors in Drawings, Specifications and Documents. Any errors, discrepancies or conflicts in the technical documents and drawings discovered by Subcontractor shall be brought to Contractor's attention before proceeding with the Work or upon discovery by Subcontractor. Subcontractor shall be responsible for revising any errors, discrepancies or conflicts and shall make all necessary repairs if Work has already commenced. Any costs or expenses resulting from failure to follow this procedure shall be borne by Subcontractor.

9. Violation by Subcontractor of any of the provisions of this Article shall be grounds for the Contractor to exercise the rights provided by Article 10 hereof.

10. Liquidated Damages for Late Delivery. Contractor shall be entitled to demand, as liquidated damages from Subcontractor for the period of the delay beyond the scheduled delivery date, the liquidated damages set forth in the text of the Purchase Order. In the event that Subcontractor continues to fail to deliver after the expiration of the liquidated damages period, or if Subcontractor fails to give adequate assurance of delivery within said liquidated damages period, Contractor reserves the right to cancel this Purchase Order for cause per Section 17.

ARTICLE 2. BASIS AND SCOPE OF PAYMENT

Payment, except as elsewhere herein specified, will be made to the Subcontractor for Work actually performed and completed, as measured and certified by the Owner's Representative or by the Contractor, which shall be accepted by the Subcontractor as full compensation for furnishing all material and for doing all Work contemplated and embraced in this Agreement; for all loss and damage arising out of the nature of the Work aforesaid, and for all risks of every description connected with the said Work. Subcontractor expressly agrees that payment by Owner is an express condition precedent to Contractor's obligation to pay Subcontractor and Subcontractor assumes the risk of nonpayment or delayed payment by Owner. Nothing contained herein shall be construed to limit Subcontractor's lien rights or legal right to recover unpaid sums from the Owner.

ARTICLE 3. PARTIAL PAYMENT(S)

Upon timely application, partial payments for Work performed under this Agreement will be made by Contractor as and when it is paid therefore by Owner (provided Subcontractor has complied with all other requirements to receive payment), and will equal the value of the Work done by Subcontractor (see Article 2 above) less 10% retainage, and less the sum of previous payments. Provided, that if Subcontractor is indebted to Contractor or anyone else for cash advances, supplies, materials, equipment, rental, or other charges, the amount of such indebtedness may be deducted by Contractor from any payment or payments made under this provision. Provided, further, that the Contractor may from time to time require and Subcontractor shall promptly provide a statement in writing setting forth what amounts, if any, are due or payable by Subcontractor to third parties for labor, materials, taxes, equipment, and/or supplies in connection with, or arising out of the performance of Subcontractor. Subcontractor further agrees to make available to Contractor throughout the course of the Project such financial records and information as are reasonably necessary, in Contractor's discretion, to evaluate Subcontractor's ability to continue to perform the Work and meets its obligations as set forth in this Agreement. Contractor may withhold, or may pay directly or by joint check, all upon the account of Subcontractor, such sums as the Contractor reasonably may determine are necessary to secure and protect the Contractor or the Owner from claims or liens that may be asserted by said third parties.

ARTICLE 4. FINAL PAYMENT

1. Upon the completion of the contract and payment therefore in full by the Owner, the Subcontractor will be paid the remaining amount due Subcontractor under this Agreement. All prior partial payments shall be subject to correction in the final payment. Final payment as herein provided shall release the Contractor from any further obligations whatsoever in respect to this Agreement. Subcontractor shall, as a condition precedent to final payment, and before payment of said remaining percentages, execute and deliver to Contractor a full and valid release and complete discharge of and from any and all claims and demands whatsoever for all matters growing out of, or in any manner connected with or founded upon, this contract or the Work contemplated thereby.

2. It is understood and agreed that Subcontractor shall receive no compensation for any Work done by it which is not approved and accepted by Owner (see Article 2 above).

3. Pertaining to final closeout requirements, no payments beyond 90% will be released until all warranties, Operations and Maintenance Manuals, extra material, and any other special requirements have been submitted as specified.

ARTICLE 5. SUBCONTRACTOR'S PRECONTRACT INQUIRY

Subcontractor acknowledges responsibility, prior to entering this Subcontract, to investigate and familiarize itself with all laws, ordinances and regulations applicable to Work under this Subcontract; with the availability and adequacy of personnel, workmen, material, supplies, equipment, power, utilities, fuel, etc., and, with respect to each of the foregoing, the cost and suitability thereof; with the prevailing wage scales, union scales, benefits and working conditions, craft jurisdictions, craft area practices, existing labor agreements, with all options, site conditions, considerations and restrictions, lease agreements, royalties, underground conditions, prevailing weather and climatological conditions and history; and any other factor or factors which may affect Subcontractor's Work under this Subcontract. The Subcontractor hereby warrants and agrees that it has investigated all such matters and familiarized itself therewith to the extent that it deems necessary. Subcontractor further agrees that Contractor shall not be liable to Subcontractor on any claim for additional payment or additional time or any claim whatsoever if such claim directly or indirectly results from Subcontractor's failure to investigate and familiarize itself sufficiently with the conditions under which this Subcontract is to be performed, including the foregoing but without restriction thereto, or from any misunderstanding thereof on the part of Subcontractor.

ARTICLE 6. CHANGE ORDERS

1. Contractor reserves the right to make changes or modifications to the Purchase Order from time to time, including, but not limited to, scope and delivery terms. **No change order is final until approved and authorized in writing by the management of the Contractor.** If any such change has an effect upon the quoted price or delivery terms, Subcontractor shall notify Contractor in writing within ten (10) business days after receipt thereof of its request for a change or the discovery of any condition which could impact the quoted price or delivery schedule. Subcontractor shall have no right to suspend or delay its performance hereunder while Contractor is approving a change order, or if Contractor fails to approve any such requests. Subcontractor agrees that suspension of performance or delay by Subcontractor under such circumstances shall be considered a material breach of this Purchase Order by Subcontractor. Any request for change order shall not include loss of efficiency, delay damages, or other indirect costs. **NO COST EXTRAS WILL BE PAID OR WORK AUTHORIZED EXCEPT PURSUANT TO A WRITTEN CHANGE ORDER ISSUED BY CONTRACTOR OR CONFIRMED BY A WRITTEN WORK ORDER AUTHORIZING SAID WORK SIGNED BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR AND ISSUED FROM CONTRACTOR'S HOME OFFICE.** Contractor's representative at the project site has no authority to approve change orders or requests for cost extras, other than to acknowledge that the work was completed. In the event of failure to agree, Subcontractor shall continue the work if requested by Contractor, and, if not resolved amicably, said dispute shall be submitted to arbitration at the conclusion of the work.

2. The Contractor agrees to forward to Owner any claims of the Subcontractor arising out of Owner-ordered changes, but is not obligated to Subcontractor for any amounts greater than that allowed by and paid by the Owner in compensation for such changes. Subcontractor shall not deal directly with Owner.

ARTICLE 7. STOPPAGE OR SUSPENSION OF WORK

1. If the Owner for any cause stops or suspends Work under the General Contract, or the General Contract between Owner and Contractor is canceled in whole or in part, then Subcontractor is to stop or suspend Work hereunder and, after and only in the amount and to the extent that Contractor has been paid shall Subcontractor be paid for such Work.

2. In the event that Contractor's Work is terminated for convenience by the Owner, then an equitable settlement for Subcontractor's Work will be made as provided in the Contract Documents. Contractor may also terminate Subcontractor's Work at any time in whole or from time to time in part for Contractor's convenience. If Subcontractor's Work is terminated for convenience of Contractor, Subcontractor shall suspend its Work on the date and to the extent specified by Contractor, terminate all agreements relating to that portion of its Work being terminated and, if requested by Contractor, assign to Contractor Subcontractor's rights therein, provide lien and bond claim releases from subcontractors, suppliers and laborers affected by the termination, and deliver to Contractor all documents and property which Subcontractor would be required to deliver if Subcontractor had completed its Work. If Subcontractor's Work is terminated for convenience, in whole or in part, Subcontractor shall be entitled to payment at the subcontract price(s) (not in quasi contract or quantum meruit) for only that portion of its Work which it performed, less applicable back charges due Contractor. Subcontractor shall not be entitled to payment for Work not performed or to overhead allocable or profit anticipated on that portion of its Work not performed.

3. No extension of time for completion will be made or compensation paid in any event for delays or suspension of Work caused by the fault or negligence of the Subcontractor or its subcontractors or suppliers.

ARTICLE 8. CLAIMS OF SUBCONTRACTOR

1. The quoted price is firm and not subject to any cost extras or escalation. Subcontractor must complete the Work at the quoted price. No additional charges of any kind by Subcontractor are authorized, including, but not limited to, additional charges for overages, acceleration and overtime, delay, loss of efficiencies, increased material costs will be allowed.

2. If Subcontractor shall claim that it is entitled to additional compensation or damages by reason of any act or omission of Owner or for which Owner is responsible or any delay caused by an act or omission of Owner, Subcontractor shall, promptly and within time to allow Contractor to comply with any applicable limits in the General Contract, submit such claims in writing to Contractor and Contractor will on behalf of Subcontractor submit the claim to Owner.

3. In the case of any dispute between Subcontractor and Contractor, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Owner both by the terms of the General Contract and by any and all decisions or determinations made thereunder. It is agreed that in the event the General Contract contains a provision, such as a "Disputes Clause," whereby claims may be resolved under an administrative procedure or arbitration, such clause is incorporated herein by reference as though fully set forth. As to any claims asserted by Subcontractor for or on account of acts or omissions of the Owner or its representative or any claims made by the Owner for which Subcontractor is responsible, Subcontractor agrees to prosecute or defend such claims in Contractor's name, in accordance with the provisions in the general contract for determining disputes. Contractor shall have the option to present such claims upon Subcontractor's behalf. Contractor and Subcontractor further agree to cooperate in prosecuting or defending claims. Subcontractor shall have full responsibility for preparation and presentation of such claims and shall bear expenses thereof, including attorneys' fees. Subcontractor agrees to be bound by the procedure and final determinations as specified in any such disputes clause, and agrees that it will not take, or will suspend, any other action or actions with respect to any such claims and will pursue no independent litigation with

respect thereto, pending final determination under such disputes clause. Subcontractor shall not be entitled to receive any greater amount from Contractor than Contractor actually does receive from the Owner on account of Subcontractor's Work, less any mark-ups or costs incurred by the Contractor and to which the Contractor is otherwise entitled, and Subcontractor agrees that it will accept such amount, if any, received by the Contractor from Owner as full satisfaction and discharge of all claims for or on account of acts or omissions of the Owner or its representative.

4. Should a dispute arise which is not controlled or determined by the above paragraph of this section or other provisions of this Subcontract, then said dispute shall be settled by Contractor's written decision with respect to such dispute. Such written decision shall be conclusive and shall be final and binding on Subcontractor and its surety. If arbitration or litigation is conducted involving Owner, Contractor, or any other party concerning or in any way relating to: responsibility under this Subcontract; any dispute relating to the Work required or alleged to be required herein; this Subcontract; or the Subcontractor; then, in any of these events, Subcontractor expressly agrees to a consolidated or joint proceeding, if and as called for by Contractor.

No dispute shall interfere with the progress of construction and Subcontractor shall proceed with its Work as directed.

5. **Governing Law and Dispute Resolution. ALL CLAIMS, DISPUTES AND OTHER MATTERS IN QUESTION ARISING OUT OF, OR RELATING TO, THIS PURCHASE ORDER OR THE BREACH THEREOF, SHALL BE DECIDED BY BINDING ARBITRATION IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, TO BE HELD IN CLEVELAND, OHIO, U.S.A.** Notice of the demand for arbitration shall be filed in writing with the other party or parties to this Contract and with the American Arbitration Association. In no event shall the arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. If the parties are unable to agree upon one arbitrator, each party shall appoint one arbitrator and the two appointed arbitrators shall agree on a third arbitrator. Each party shall pay the cost and fees of the arbitrator it selects and one-half of the cost and fees of the third arbitrator. Discovery shall be permitted under the supervision of the arbitrator(s) in accordance with the Ohio Rules of Civil Procedure Any decision or award rendered by at least a majority of the arbitrators shall be final and judgment may be entered upon it under the United States Arbitration Act or laws of the State of Ohio, as may be applicable. The Contract shall be governed by and construed in accordance with the laws of the State of Ohio excluding the law of conflict. Subcontractor consents to the venue and personal jurisdiction of Ohio federal or state courts exclusively to adjudicate disputes arising out of this contract or to enforce the provisions of this arbitration clause.

ARTICLE 9. DELAYS AND EXTENSIONS OF TIME

1. In the event that Subcontractor's performance of this Subcontract is delayed or interfered with by the acts of the Owner, Contractor, or other Subcontractors, Subcontractor may request an extension of the time, as hereafter provided, but only upon the same terms and conditions and only to the extent actually allowed to Contractor by Owner and Subcontractor shall not be entitled to any increase in the subcontract price or to damages or additional compensation as a consequence of such delay or interference, or for acceleration relating to any such delay or interference, except to the extent that the General Contract entitles the Contractor to compensation for such delays and then only to the extent of any amounts that the Contractor may, on behalf of the Subcontractor, recover from the Owner for such delays.

2. No allowance for an extension of time, for any cause whatsoever, shall be claimed by, or made to, the Subcontractor unless the Subcontractor shall have made written request upon the Contractor for such extension within five (5) working days after the cause of such extension occurred, or, if the General Contract provides for a shorter period, within sufficient time to permit the Contractor to give notice to the Owner within the time allowed by the General Contract for such notice. However, no extension of time shall be made to Subcontractor for delay by the Subcontractor in preparing drawings or in securing approval by the architect or engineer when such drawings are not properly prepared or when the Subcontractor by the exercise of reasonable diligence and judgment, could have anticipated and avoided the delay.

3. In the event that Owner should assess actual or liquidated damages or penalties against Contractor, then Subcontractor shall be responsible for such portion of the assessment as may be directly attributable to it, regardless of the cause of delay.

ARTICLE 10. COMPLETION OF WORK BY CONTRACTOR

If Subcontractor shall fail to commence the Work within the specified time, or to prosecute said Work continuously with sufficient workmen and equipment to assure its completion within the time herein specified for completion, or to perform said Work according to the provisions of the contract, or if for any other cause or reason whatsoever Subcontractor shall fail to carry on the Work in an acceptable manner, the Contractor may elect to give notice in writing of such default, specifying the same, and if the Subcontractor, within a period of seventy-two (72) hours after said notice, not including Saturday or Sunday, shall not proceed in accordance therewith, then the Contractor shall have full power and authority, without process of law and without violating this Agreement, to take the prosecution of all or part of the Work out of the hands of the Subcontractor and complete it with its own forces, or contract with other parties for its completion, or use such other measures as in Contractor's opinion are necessary for its completion, including the use of the equipment, plant and other property of Subcontractor on the Work at no cost to the Contractor for the use of the same. Neither by the taking over of the Work nor by its completion in accordance with the terms of this provision shall Contractor forfeit its right to recover damages from

Subcontractor or from Subcontractor's surety for failure to complete or for delay in such completion. Should the expenses incurred by Contractor in taking over and completing the Work be less than the sum that would have become payable under this Agreement if said Work had been completed by Subcontractor, then Subcontractor shall be entitled to the difference. Should the expense exceed the said sum, Subcontractor and Subcontractor's surety shall be liable to the Contractor for the amount of such excess. Upon the taking over of the Work by Contractor as herein provided for, no further payment will be made to Subcontractor until the Work is completed, and any moneys due or that may become due Subcontractor under this Agreement will be withheld and may be applied by the Contractor to payments for labor, materials, supplies and equipment used in the prosecution of the Work, for the payment of rental charges on the equipment used therein, and to the payment of any excess cost to Contractor of completing the said Work.

ARTICLE 11. CONTRACTUAL RELATIONSHIP

1. Subcontractor represents that it is fully experienced and properly qualified as an expert to perform the class or Work provided for herein and that it is properly equipped, organized and financed to handle such Work. Subcontractor shall finance its own operations hereunder and warrants that it is, and shall operate as, an independent Contractor and not as an agent of Contractor.

2. Covenants. Subcontractor shall (a) before the date on which the Work is to start, obtain, and at all times maintain all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Work; (b) comply with all rules, regulations and policies of the Contractor, Client, and/or Owner/User, including security procedures concerning systems and data and access thereto, building security procedures, including the restriction of access to certain areas of the premises or systems for security reasons, and general health and safety practices and procedures; (c) maintain complete and accurate records relating to the Work, including records of the time spent and materials used by Subcontractor in performing the Work; (d) during the performance of the Work and for two (2) years following completion, upon Contractor's written request, Subcontractor shall allow Contractor to inspect and make copies of such records in connection with the Work; (e) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Subcontractor, are properly licensed, certified or accredited as required by applicable law and are suitably skill, experienced and qualified to perform the Work; (f) ensure that all of its equipment used in performing the Work is in good working order and suitable for the purposes for which it is used, and conforms to all relevant industry standards and standards as may be specified by the Contractor; and (g) keep and maintain any Contractor equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Contractor's written instructions or authorization.

3. Subcontractor's Indemnity. **SUBCONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD CONTRACTOR, CLIENT, AND OWNER/USER, THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND AFFILIATED COMPANIES ("INDEMNIFIED PARTIES") FREE AND HARMLESS FROM ANY AND ALL ACTUAL OR ALLEGED LIABILITY, EXPENSES, CLAIMS, LOSS, PERSONAL INJURY INCLUDING DEATH, OR PROPERTY DAMAGE, INCLUDING REASONABLE ATTORNEY'S FEES (COLLECTIVELY, "DAMAGES") WHICH: (A) IN ANY MANNER ARISE OUT OF, RELATE TO, OR ARE CONNECTED TO THIS PURCHASE ORDER OR WORK PROVIDED THEREUNDER, HOWSOEVER SAME MAY BE CAUSED, INCLUDING CONCURRENT NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, WILLFUL MISCONDUCT, BREACH OF THE TERMS HEREIN, OR OTHERWISE, EXCEPTING ONLY FOR DAMAGES CAUSED SOLELY AND EXCLUSIVELY BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF INDEMNIFIED PARTIES; (B) ARISE FROM THE VIOLATION OF ANY LAW; OR (C) ARISE FROM THE INFRINGEMENT BY SUBCONTRACTOR OF ANY THIRD PARTY PATENT, DESIGN, TRADEMARK, NAME, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT . SUBCONTRACTOR SHALL NOT ENTER INTO ANY SETTLEMENT WITHOUT CONTRACTOR'S PRIOR WRITTEN CONSENT.**

ARTICLE 12. COOPERATION WITH CONTRACTOR AND OTHER SUBCONTRACTORS

The Work requires complete integration with Work to be performed by Contractor and its other Subcontractors as to time, location and schedules. Subcontractor shall fully cooperate with Contractor and others engaged in the Work on the Project, and shall not interfere with the performance of such Work, and Subcontractor shall coordinate its Work with the Work of Contractor and of others so that the Work on the entire Project may be performed with the utmost speed consistent with good practice. In case of conflict or other reason for coordination Contractor may direct, and Subcontractor will execute necessary coordination or the performance of certain Work, even at increased expense to the Subcontractor, without Contractor incurring liability therefore.

ARTICLE 13. INSPECTION AND CORRECTION

1. The materials and Work shall at all times be subject to inspection by Owner and Contractor, and their representatives. Subcontractor shall at all times provide all safe and necessary facilities for such inspection. Owner and Contractor shall be afforded full and free access to the shops, factories and places of business of Subcontractor and its Subcontractors and materialmen for the purpose of inspection and in order to determine the general conditions and progress of the Work. Subcontractor shall promptly furnish to Contractor all samples, drawings and lists required of it in connection with the Work, but approval thereof shall not relieve Subcontractor of responsibility for complying with requirements and conditions of this Subcontract. In the event that any part of the Work or any material is determined by Owner or Contractor to be improper or defective, either during the actual performance of Work under the General Contract or during any guarantee period provided in the General Contract, or, if no guarantee period is so provided, then within one (1) year after completion of Subcontractor's Work, Subcontractor shall, immediately upon being notified in writing by Contractor to do so, proceed to remove, dispose and replace the same at its own cost and expense. If Subcontractor shall fail to replace or correct

defective material or workmanship promptly and completely, Contractor, at its option, may replace or correct the same. Subcontractor agrees to pay the Contractor all costs, expenses (including attorneys' fees), liabilities and consequential damages of Contractor in connection with said replacement or corrections, regardless of whether said replacements or corrections are removed, disposed of and replaced by Subcontractor or Contractor.

2. Inspection, Acceptance, and Quality Control. Subcontractor represents that it has instituted a quality control/quality assurance program capable of providing the finished goods to quality required and in compliance with contract specifications. If requested, Subcontractor shall provide written documentation regarding Subcontractor's quality control program. Contractor shall be entitled at any time during manufacture to inspect and examine the Work at Subcontractor's or its subcontractor's facilities. If any tests are to be performed during the manufacturing process, Contractor shall be given at least ten (10) days advance written notice so that Contractor may exercise its option to witness said tests. The Work is also subject to inspection by Client and Owner/User at any time. Review and/or approval of drawings, designs or technical information provided by Subcontractor, or inspection, waiver of inspection, or failure to properly inspect the Work, by Contractor or Client and/or Owner/User, shall in no event operate as an acceptance of the Work or as a waiver of any rights of Contractor with respect to defects therein, or in any way release Subcontractor from responsibility to conform to the Purchase Order requirements, specifications, warranties, and good workmanship. Subcontractor shall not be released from its contractual or warranty obligations with respect to said Work by virtue of acceptance or review/approval, final payment, inspection, or waiver of inspection.

3. Warranties. Subcontractor expressly warrants and represents to Contractor, Client, and Owner/User of the Work: (a) that all Work shall be new and of merchantable quality, fully-functional, free of defects in design, engineering, materials, and workmanship, free of rights of third parties, free of all liens and encumbrances, fit for the purpose intended, shall comply with good and sound design/engineering practices and Law, and shall conform in all respects to the specifications, drawings, performance guarantees, and requirements of the Purchase Order. Unless otherwise stated, the Work warranty period shall expire twelve (12) months after the date of first placing the Work into commercial operation. If the system is not fully-functional, then Subcontractor shall repair the system at no additional cost. All repairs or replacements shall carry an additional warranty of not less than (12) months after the date of the repair or replacement. This warranty shall not prevent or otherwise limit Contractor from enforcing any legal guarantees or warranty rights or remedies due Contractor under applicable law; (b) that the Work performed shall comply with all applicable federal, state, and local laws, regulations, and all applicable industrial, manufacturing, building, and safety codes and regulations, that apply to the Work, including laws, regulations, codes in any jurisdiction outside the U.S.A if applicable to the Work, including but not limited to, environmental regulations, the Occupational Safety and Health Act of 1970 and amendments thereto, Fair Labor Standards Act, and Equal Employment Opportunity provisions barring employment discrimination, hereinafter collectively referred to as ("Law"); (c) that any materials delivered for the Work are in fully working condition and fit for the purpose intended, conform with all specifications, drawings and requirements, and have a manufacturer's warranty that is passed on to Contractor and/or Client; (d) that the use and sale of the Work will not infringe any patent, design, trademark, name, copyright, trade secret or other intellectual property right. In the event of patent infringement, in addition to other remedies of Contractor, Subcontractor shall, upon the written consent of Contractor, either replace or modify the Work to the extent required to avoid infringement, or procure an irrevocable, royalty-free license to use, modify, repair and maintain the Work at the Client's facilities; (e) that the Work will be adequately contained, packaged, marked and labeled in compliance with all applicable laws and regulations, and that instructions and information, including but not limited to, Material Safety Data Sheets, required by law or necessary for the safe and proper use of the Work, will be provided to Contractor or Client; and (f) that in the event the Work fails to meet above stated warranties and guarantees, Subcontractor will, at Contractor's option and at Subcontractor's sole cost and expense, either repair or replace same without delay. Subcontractor will be given access to the job-site for the purpose of making repairs or replacements. In the event that the making of such repairs or replacements requires the field removal of materials and equipment and/or the uncovering, reinstallation, and/or recovering of any work in place, the same shall be done at Subcontractor's sole cost and expense. In the event that the Subcontractor requests Contractor to return the materials and equipment (or any parts or components thereof) to Subcontractor, Contractor will do so in conformance with Subcontractor's instructions and at Subcontractor's sole cost and expense. The foregoing remedies are cumulative and are in addition to any other remedies available to Contractor at law, in equity or under the Purchase Order.

ARTICLE 14. CLEANUP | RECYCLING

1. Subcontractor shall perform its Work as herein required so that the premises shall be neat, orderly and free from debris at all times. Upon termination or completion of its Work Subcontractor agrees to remove all unused materials and all equipment, utilities and facilities furnished by Subcontractor, to clean up all refuse and debris, and to leave the premises clean, orderly and in good condition. Upon twenty-four (24) hours written notice of failure to comply with these provisions, the Contractor may elect to perform such cleanup of the Subcontractor's refuse, debris, etc., as the Contractor reasonably deems necessary and the cost of the same will be charged to Subcontractor.

2. Recycling & To the greatest extent possible Subcontractor shall assist the Contractor in implementing a Project recycling program. This would include but not be limited to segregating the waste materials generated from its operation into containers as required.

ARTICLE 15. PUBLICITY RESTRICTIONS AND CONFIDENTIALITY REQUIREMENTS

No public news release, advertising, or other disclosure of Confidential Information may be released without Contractor's written approval. Confidential Information, as used herein, shall mean all Project information, including but not limited to, business plans, customer lists, prospective customers, leases, financial statements, Project lists (current and past) and devices disclosed or made available to Contractor, its subcontractors and suppliers. Examples of this restriction are the use of the Project in advertising, internal or external newsletters, brochures, and news releases to media sources of any kind. To request approval to utilize this Project for such purposes, please provide a complete copy of the proposed release and a listing of the agencies or uses for which it is intended, to the office of Contractor. Approval requests will be promptly processed. Subcontractor acknowledges and agrees that Confidential Information is confidential, proprietary to and a valuable trade secret and that any disclosure or unauthorized use thereof will cause irreparable harm and grave loss. Subcontractor agrees not to disclose any such Confidential Information without prior permission from Contractor. The restrictions and obligations of this Article shall survive any expiration, termination or cancellation of the Agreement and shall continue to bind all parties, their successors and assigns.

ARTICLE 16. SUBORDINATION OF LIEN RIGHTS

To the extent and only to the extent required by the General Contract and/or the underlying construction financing agreements, Subcontractor expressly subordinates all contractual, constitutional and statutory mechanics' and materialmen's liens to which the Subcontractor may be or may become entitled to all liens and security interests securing the loan used to finance construction of the Project and expressly waives any right to remove any removable improvements from the Project. This clause is intended solely to establish the priority of potential future liens and shall not be construed to limit the Subcontractor's lien rights as afforded under Washington State law.

ARTICLE 17. RESPONSIBILITY FOR THE WORK

1. Subcontractor shall be responsible for, and shall bear any and all risk of loss or damage to its Work, materials supplied and Subcontractor's property and equipment, until final acceptance of its Work.
2. Subcontractor shall be responsible for any and all damages to the Work of other trades or third party property caused by Subcontractor's Work or Subcontractor's personnel.
3. Insurance. Subcontractor agrees to purchase and maintain, and to cause any approved subcontractors and vendors/suppliers to purchase and maintain, at all times during the performance of the Purchase Order, the following insurance: (a) Transit Insurance with limits to the full replacement costs of the Work; (b) Workers Compensation in compliance with the laws of all states where any part of the Purchase Order is performed, including liability for occupational diseases, plus employer's liability with minimum limits of One Hundred Thousand (\$100,000) Dollars per employee; (c) General Comprehensive Liability Insurance with limits not less than One Million (\$1,000,000) Dollars per occurrence for personal injury or property damage. This policy shall provide coverage for explosions, collapses, subsurface damage, independent contractors, products and completed operations, contractual liability, and broad form property damage; (d) Comprehensive Automobile Liability Insurance with limits of One Million (\$1,000,000) Dollars per occurrence for personal injury or property damage, and including not only owned but also hired and other non-owned vehicles; (e) In the event that the Work includes engineering, design, inspection, or other professional services, Subcontractor shall maintain professional liability/errors and omissions insurance with limits not less than Two Million (\$2,000,000) Dollars for each claim and annual aggregate, and continue such coverage for a period of two (2) years after Acceptance of the Work; and (f) Umbrella Liability Insurance with limits of Ten Million (\$10,000,000) Dollars in excess of (b), (c), (d) and (e) above, or as otherwise stated in the Purchase Order. TO THE FULLEST EXTENT POSSIBLE, SUBCONTRACTOR AGREES TO A WAIVER OF SUBROGATION IN EACH OF THE INSURANCE POLICIES PROVIDED BY SUBCONTRACTOR HEREIN OF ALL RIGHTS OF RECOVERY AGAINST INDEMNIFIED PARTIES, REGARDLESS OF THE CAUSE OF THE LOSS OR DAMAGE AND REGARDLESS OF FAULT. INDEMNIFIED PARTIES SHALL BE NAMED AS ADDITIONAL INSURED IN EACH OF SAID INSURANCE POLICIES, EXCEPT FOR WORKMEN'S COMPENSATION AND COVERAGES SET FORTH IN (B) ABOVE. THE COVERAGE AFFORDED SAID ADDITIONAL INSURED SHALL APPLY AS PRIMARY INSURANCE AND NOT REQUIRE CONTRIBUTION FROM SIMILAR INSURANCE COVERAGE MAINTAINED BY INDEMNIFIED PARTIES.

ARTICLE 18. AVAILABILITY OF CONTRACT DOCUMENTS

Subcontractor acknowledges availability of complete Contract Documents at office of Contractor, and acknowledges Subcontractor's responsibility to have read all portions therein pertaining to Work under this Agreement.

ARTICLE 19. UNEMPLOYMENT INSURANCE, TAXES AND UNION BENEFITS

Subcontractor has the status of an employer as defined by the Unemployment Compensation Act of the state in which this contract is to be performed, and all similar acts of the national government and including all Social Security Acts; Subcontractor will withhold from its payrolls as required by law or government regulation and shall have full and exclusive liability for the payment of any and all taxes and contributions for unemployment insurance or workmen's compensation, old age retirement benefits, life pensions and annuities, health and welfare, which may now or hereafter be imposed by the United States or any state or any labor agreement to which Contractor is a part, whether measured by the wages, salaries or enumerations paid to persons employed by Subcontractor or otherwise, for the

Work required to be performed hereunder. Subcontractor shall comply with all federal and state laws on such subjects and all rules and regulations promulgated thereunder, and shall maintain suitable forms, books and records and shall indemnify and defend and save and hold Contractor harmless against any liability for the payment of any and all such taxes and contributions, or penalties arising by reason thereof. Subcontractor shall also pay any and all taxes, excises, assessments, penalties, duties, tariffs or other charges, levied by any governmental authority on or because of the Work to be done hereunder, or any equipment, supplies, services or materials used or supplied in the performance thereof and shall indemnify and defend and save and hold Contractor harmless against any liability for any such taxes, assessments, duties, tariffs or charges.

Any and all changes in duties and/or tariffs including Ad Valorem taxes shall not be added to the purchase order or invoice. Buyers shall not pay any such tax, duty or tariff of any description once the Quote and/or P.O. is accepted. Seller shall not amend, change or withdraw the tariff, tax or duty upon acceptance of the Request For Quote or Purchase Order unless same was reduced by the governing agency or political subdivision.

ARTICLE 20. LABOR CONDITIONS & EMPLOYMENT PRACTICES

1. We are an Equal Opportunity Employer and require full compliance with all applicable federal, state, and local laws and regulations.

Subcontractor shall, to the extent permissible under federal law and any applicable state laws, comply with and be bound by such terms and conditions of Contractor's labor agreements as are applicable to the Work to be done hereunder, including without limitations, the terms and provisions of any such agreements providing for the assignment of Work or the settlement of jurisdictional disputes and the payment of wages and fringe benefits provided for in Contractor's labor agreement.

2. Subcontractor/Supplier (hereinafter "Subcontractor") shall comply with 41 CFR 60.4.2(d) (Executive Order No. 11246), Executive Order No. 11701, the Vietnam Era Veteran's Readjustment Assistance Act of 1972 and the Rehabilitation Act of 1973, and all other orders, rules and regulations promulgated thereunder (included but not limited to 41 CFR Part 60&1, et al, 41 CFR Part 60&250, et al. and 41 CFR Part 60&741), all as same may have been or may be amended. The "Equal Opportunity Clause" of 41 CFR Section 60&250.4 and the "Affirmative Action for Handicapped Workers" clause of 41 CFR Section 60&741.4 and 60&741.5 are incorporated herein by this reference. Subcontractor certifies that segregated facilities (within the meaning of 41 CFR Section 6&1.8) are not and will not be maintained or provided for Subcontractor's employees and that Subcontractor will not permit its employees to perform any work at any location under Subcontractor's control where segregated facilities are maintained. Subcontractor shall obtain a similar certification from any of its Support as required by 41 CFR 60&1.8. Subcontractor shall pass this requirement on in full to its sub-tier subcontractors and suppliers, without exception,

3. Subcontractor shall, if requested to do so by Contractor, remove from the Jobsite any employee whom Contractor reasonably determines to be unacceptable.

4. The following applies only in the event that this Subcontract is based on the Subcontractor being required to sign a "one job" union agreement to comply with contract requirements. The original Subcontract amount includes a mutually agreed "Not to Exceed" allowance (as called out in the Scope of Work above) for the actual costs incurred by Subcontractor due to the requirements of the "one job" union agreement (union benefits actually paid, increased wages actually paid, etc.). At completion and final acceptance of Work Subcontractor shall cooperate with Contractor in the reconciliation of this allowance based on actual costs incurred, complete with all appropriate documentation substantiating costs incurred, accompanied by a fully executed copy of the "one job" union agreement.

5. Subcontractor shall comply with any Executive Order, law or statute requiring it to utilize "E-Verify" to electronically verify the employment eligibility of its employees, whether stationed working on this Project or not. It is the Subcontractor's responsibility to ascertain the applicability of any such Executive Order, law or statute to its Work under this Subcontract.

ARTICLE 21. BONDS

If requested, Subcontractor shall, prior to commencing Work, furnish a performance and payment surety bond or bonds with companies satisfactory to Contractor, in form and amount of all of the Terms and Conditions hereof. No change, alteration, or modification in or deviation from this Subcontract, its terms, conditions, plans or specifications, or in the manner, time or amount of payment as provided herein, whether or not made in the manner as herein provided, shall release or exonerate, in whole or in part, any surety on any bond given in connection with this Subcontract. The requirement for a surety bond is a material condition of this Subcontract. Failure to provide such bond is justification for default.

ARTICLE 22. LAWS AND REGULATIONS

1. Subcontractor, its employees and representatives shall at all times comply with all applicable laws, ordinances, statutes, rules and regulations, federal and state, county and municipal, and particularly those relating to wages, hours, fair employment practices, anti-harassment, non-discrimination, safety and working conditions.

2. Subcontractor shall procure and pay for all permits, licenses and inspections required by any governmental authority for any part of the Work hereunder and shall furnish any bonds, security or deposits required by such authority to permit performance of the Work.

ARTICLE 23. PATENTS AND ROYALTIES

Subcontractor shall indemnify and defend and save harmless Owner and Contractor, and each of them, from and against all claims, royalties, damages, liabilities, costs and expenses of whatsoever kind or nature (including attorney fees) in any manner resulting, or claimed to result from any alleged infringement of any patents or for the misuse of any patented article by Subcontractor, its representatives, employees or others acting on its behalf.

ARTICLE 24. DESIGN BUILD WORK

If and to the extent Subcontractor's Work calls for or requires any design or engineering to be provided by or performed by Subcontractor, Subcontractor acknowledges it has full responsibility for the adequacy, accuracy and conformance of such design or engineering work and that the Contractor is entitled to rely thereon. Subcontractor warrants that all such design and engineering provided or performed by it shall fully comply with all contract requirements, all codes, laws and regulations, and shall be performed consistent with the highest professional standards. Subcontractor shall reimburse or indemnify, pursuant to the indemnification obligation herein, Contractor for all costs, losses, damages, etc., caused by or resulting from any nonconformity, inadequacy, or inaccuracy, etc., in Subcontractor's design or engineering. Subcontractors who are required by the specifications to furnish engineering drawings and calculations by a qualified licensed professional shall require the licensed design professional to provide Design Errors and Omissions/Professional Liability insurance certification in compliance with Exhibit "A" to this Subcontract.

ARTICLE 25. ASSIGNMENT

Any subletting, assignment or hypothecation of this Subcontract, or any portion of its Work, or any amount due or payable hereunder, made by Subcontractor without the prior written consent of Contractor shall be void. Subcontractor agrees that if any portion of the Work covered by this Subcontract is further subcontracted, then such sub-Subcontractor shall be bound by and observe the provisions of this clause to the same extent as herein required by Subcontractor, and that a copy of this clause imposing such obligations upon the sub-Subcontractor shall be included in any further subcontract.

ARTICLE 26. SEVERABILITY

In the event that any provision of this Subcontract shall at any time contravene in whole or in part any applicable federal or state law, ruling or regulation, then such provision shall remain in effect only to the extent permitted, and the remaining provision hereof shall remain in full force and effect.

ARTICLE 27. LATENT DEFECTS

Without limitation, Subcontractor shall be responsible for the repair of latent defects in their Work. Subcontractor shall pay for consequential damages related to any latent defects in their Work and Subcontractor shall pay for all costs necessary to repair the Work of others caused by uncovering and repairing defective Work.

ARTICLE 28. COMPLETE AGREEMENT

This document contains all covenants, stipulations and provisions agreed upon by the parties. No verbal agreement with any agent either before or after the execution of this Agreement shall affect or modify any of the terms or obligations herein contained and this contract shall be conclusively considered as containing and expressing all of the terms and conditions agreed upon by the parties hereto. No agents or representatives of either party has authority to make, and the parties shall not be bound by or be liable for any statement, representation, promise or agreement not set forth herein. No changes, amendments or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this Subcontract.

ARTICLE 29. MISCELLANEOUS

1. The terms and conditions hereof shall inure to and be binding upon the parties hereto, their successors, assigns, executors, administrators and legal representatives. Wherever herein used the singular shall include the plural and the neutral gender shall include the masculine and feminine.
2. Weather Protection of Equipment. Subcontractor must take all appropriate measures to protect Work or components thereof against weather damage during all phases of fabrication, storage, delivery, and field installation, if applicable. Subcontractor shall indemnify Contractor from all costs, and expenses resulting from the failure to take such measures.
3. Material Provided by Contractor. Upon receipt of Contractor's property, Subcontractor shall provide a written "Receiving Record" within (3) working days of receipt. This record shall indicate the date of receipt, quantity received, a description of items and indication of any apparent damage at time of delivery to Subcontractor. Subcontractor shall bear all risk of loss of Contractor's property while in Subcontractor's possession and shall supply evidence of adequate property insurance coverage upon request.
4. Security Interest. As security for any and all advance payments made by Contractor, and/or equipment/materials of Contractor received by Subcontractor to be incorporated into said Work, if any, Subcontractor agrees that Contractor shall retain and maintain a security interest therein upon identification to the Purchase Order. Subcontractor shall segregate and identify said items purchased,

equipment/materials advanced, or work in progress, as being the property of Contractor and Subcontractor shall not assign, sell, transfer, lease, pledge, discount, encumber, or otherwise hypothecate same without the prior written consent of Contractor. Subcontractor agrees to join with Contractor in the execution of financing statements necessary to perfect the security interest herein granted, and Contractor is expressly authorized, as attorney-in-fact, for Subcontractor to file one or more financing statements or a copy or original of this Purchase Order in the appropriate filing office as may be required, naming Subcontractor as debtor and Contractor as secured party. Said security interest shall include all proceeds arising from the sale, lease, or transfer of said Work.

5. Survival. The obligations of the Subcontractor to Contractor survive the termination and completion of the Purchase Order, except as otherwise provided in these Subcontractor General Term and Conditions.

6. Cumulative Remedies. The rights and remedies under the Purchase Order and these Subcontract General Terms and Conditions are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

7. Headings. The headings in these Subcontractor General Terms and Conditions are for convenience only and shall not affect their interpretation.

8. Contract Interpretation. The parties to the Purchase Order represent that they have negotiated and understand its provisions and agree that no presumptions should be made against drafter. The Purchase Order will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. If a provision of these Subcontractor General Terms and Conditions is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of these Subcontractor General Terms and Conditions will not be impaired. The Purchase Order and these Subcontractor General Terms and Conditions contain the entire understanding of the parties regarding the subject matter of the Purchase

9. Order and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of the Purchase Order. No waiver will be binding on Contractor unless it is in writing and signed by the party making the waiver. Contractor's waiver of a breach of a provision of these Subcontractor General Terms and Conditions will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.