

THE FOLLOWING TERMS AND CONDITIONS ARE A PART OF THE PURCHASE CONTRACT.

1. **NO ALTERATION.**

The contract formed based upon this Purchase Contract is expressly limited to the terms and conditions contained in this document. No alteration of any of the terms, conditions, delivery arrangements, price, quality, quantities, or specifications of this Purchase Contract will be effective without the express written consent of Buyer.

2. **INCORPORATION BY REFERENCE.**

Seller assumes toward Buyer all obligations and responsibilities which Buyer has assumed toward the Owner of the project for which the goods are purchased, and toward any contractor with whom Buyer has contracted whose contract with Buyer requires Buyer to provide the goods being purchased from Seller. In case of conflict between the terms of the obligation and the responsibilities of the parties of this Purchase Contract and the Prime Contract, this Purchase Contract shall control. In addition, all specifications, drawings, and other performance data submitted to Seller are incorporated in this Purchase Contract.

3. **PAYMENT.**

Seller shall submit to the Buyer "Application for Payment," at the Buyer's business office, and properly executed, by the twentieth (20th) day of the month to enable the Buyer to timely apply for and obtain payment from the Owner. Seller acknowledges receipt and utilization of Buyer's form titled (Exhibit C) "Seller's Application for Payment." Payments will be made monthly on approved progress estimates covering 90.00% of the material delivered by the Seller to the end of the previous progress period, such payments to be made ten (10) days after payment has been received by Buyer from Owner. Progress payments shall be deemed advances and are subject to adjustment at any time prior to final payment for errors, overpayment, or Buyer's good faith determination that the remaining balance of payments may be insufficient to insure completion of the Purchase Contract in accordance with its terms or to pay lien or bond claims. Notwithstanding the above, if the Owner fails to make payment to the Buyer when due in accordance with the terms of the Prime Contract, the associated payment to the Seller will become due sixty (60) days after payment was due to the Buyer from the Owner.

No progress payment or final payment shall be due or payable until the Seller furnishes the Contractor with the required documentation as outlined in the Purchase Contract Instructions, together with a sworn statement that all accounts for labour, sub-subcontracts, materials, construction machinery and equipment and other indebtedness which might have been incurred by the Seller in the performance of the Work and for which the Contractor might in any way be held responsible have been paid in full (except for holdback amounts to be payable out of the funds to be paid to the Seller or as an identified amount in dispute).

4. **WAIVER OF LIEN AND CLAIMS.**

Seller agrees that all payments paid to Seller by Buyer via any financial instrument whatsoever shall become effective as, "an unconditional lien claim waiver," and once the financial instrument has been properly endorsed and paid by the bank upon which it was drawn, shall become effective to release pro tanto any and all claims and rights of lien which the Seller has or may have on the property identified in the Prime Contract for services, equipment supplied, materials furnished and any/all claims unconditionally for the dollar amount specified by the amount of the payment. It is furthermore agreed that Buyer reserves the right to require Seller to furnish additional lien claim waivers to Buyer with each month's pay request covering all materials and equipment on the project for that month.

5. **SUBMITTALS.**

Seller shall be responsible for submitting all submittals in the quantities required by the Prime Contract to allow proper approval and/or review duration and return so as to not hinder the delivery and installation schedule sequence.

6. **CHANGES.**

Buyer reserves the right at any time to make changes in any one or more of the following: (a) specifications, drawings, and data incorporated in this Purchase Contract where the items to be furnished are to be specifically manufactured for Buyer; (b) methods of shipment and packing; (c) place of delivery; and (d) time of delivery. If any such change causes an increase or decrease in the cost or the time required for performance of this contract, an equitable adjustment shall be made in the price or delivery schedule, or both. Any claim by Seller for adjustment under this provision shall be deemed waived unless asserted in writing ten (10) days from receipt by Seller of the change. Price increases or extensions of time for delivery shall not be binding upon Buyer unless evidenced by a purchase contract change notice issued and signed by Buyer. In case of any disputes over the adjustment of the cost, Seller shall proceed with the change, and the dispute shall be resolved in accordance with the procedures set forth in paragraph 19. Seller acknowledges that, unless expressly stated otherwise within a written change order, any change in the Purchase Contract price and time effected through a written change order shall constitute full payment and accord and satisfaction for all cost incurred, labour performed, material and equipment furnished, and any delay, acceleration, or loss of efficiency associated with the change in the work.

7. **DELIVERY.**

Time is of the essence in this Purchase Contract, and if delivery of goods is not completed by the time promised, Buyer reserves the right, without liability, in addition to its other rights and remedies, to terminate this Purchase Contract by notice effective when received by Seller as to goods not yet shipped, and to purchase substitute goods elsewhere. Any provision for delivery of goods in installments shall not be construed as making the obligations of Seller severable. Shipments sent C.O.D. without Buyer's written consent will not be accepted, and will be at Seller's risk. Buyer will hold Seller responsible and liable for any and all losses, costs and expenses caused by any delayed receipt by Buyer of goods, including any liquidated damages imposed on Buyer. Seller shall deliver material according to Buyer's project schedule. The Seller shall coordinate all material deliveries with Buyer's Project Superintendent.

8. **SHIPPING INSTRUCTIONS.**

Unless otherwise specified, goods are to be shipped prepaid F.O.B. destination.

9. **INSPECTION.**

Goods are subject to the inspection and approval at Buyer's destination by Buyer, the owner of the project for which the goods are purchased, and any contractor with whom Buyer has contracted, even though payment may have been made for the goods prior to their arrival. Buyer reserves the right to reject and refuse to accept goods which are not in accordance with the requirements of this Purchase Contract. Seller is responsible for Buyer's cost of inspecting goods rejected. Payment for goods shall not be deemed acceptance of such goods. Materials condemned by the Buyer, Architect/Engineer or Owner as failing to conform to the Prime Contract shall upon notice from the Buyer, be immediately removed by the Seller. Failure of the Buyer to immediately condemn any materials as installed shall not in any way waive the Buyer's right to object at any subsequent time.

10. **WARRANTY.**

Seller warrants that the goods furnished will be in full conformity with any specifications, drawings, and performance data provided by Buyer, Seller's samples, and all other requirements specified by the terms and conditions of this Purchase Contract, including such terms and conditions as are incorporated by reference in this Purchase Contract, and that the goods furnished will be of merchantable quality and fit for the uses intended by Buyer. Seller further grants to Buyer the identical guarantees and warranties which Buyer is required to provide to the owner of the project for which the goods are purchased, and if Buyer's contract is not directly with the Owner, also grants to Buyer the identical guarantees and warranties which Buyer is required to provide to the contractor with whom Buyer contracts and the owner of the project. Seller's warranties and guarantees hereunder shall be in addition to any additional warranties and guarantees provided to Buyer by Seller.

11. **RISK OF LOSS.**

Seller assumes the risk of all goods until tendered to Buyer's possession at the destination specified in this Purchase Contract.

12. MERIT SHOP CONTRACTOR.

Seller is aware and understands that any union disagreements affecting the Seller will not alleviate the Seller from completing the work on Schedule.

13. PROPERTY FURNISHED TO SELLER BY BUYER.

Unless otherwise agreed in writing, all special dies, molds, patterns, jigs, fixtures, and any other property furnished to Seller by Buyer, or specifically paid for by Buyer for use in the performance of this Purchase Contract, shall be and remain the property of Buyer, shall be subject to removal upon Buyer's instruction, shall be used only in filling orders from Buyer, and shall be held at Seller's risk and shall be kept insured by Seller at Seller's expense while in its custody or control in an amount equal to the replacement cost, with loss payable to Buyer. Copies of policies and certificates of such insurance will be furnished to Buyer on demand.

14. INDEMNITY.

Seller agrees to defend, indemnify, and hold Buyer harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from, or connected with the goods to be furnished under this Purchase Contract, even though such claims may prove to be false, groundless, or fraudulent, to the fullest extent permitted by law and subject to the limitations provided below.

Seller's duty to indemnify Buyer shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by, or resulting from, the sole negligence of Buyer.

Seller's duty to indemnify Buyer for liability for damages arising out of bodily injury to persons or damage to property caused by, or resulting from, the concurrent negligence of (a) Buyer and (b) Seller, shall apply only to the extent of negligence of Seller.

Further, the indemnification obligation under this Purchase Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefits acts, or other employee benefits acts; provided, Seller's waiver of immunity by the provisions of this paragraph extends only to claims against Seller by Buyer, and does not include, or extend to, any claims, by Seller's employees directly against Seller. SELLER AND BUYER ACKNOWLEDGE THAT THE WAIVER OF THE WAIVER OF IMMUNITY SPECIFIED BY THIS PARAGRAH IS MUTUALLY NEGOTIATED. Defense costs recovery shall include all fees (of attorneys and experts), costs, and expenses. In addition, Buyer shall be entitled to recover compensation for all of its in-house expenses (including materials and labor) consumed in its defense.

15. INSURANCE.

Seller shall obtain and continuously carry at its own expense and cost, commercial general liability insurance including coverage for: premises operations; blanket contractual liability, tortious liability, contractors protective liability, broad form property damage and broad form products and completed operations liability. The minimum limit of insurance to be provided shall be not less than that of the Prime Contract and in no case shall the limit be less than \$2,000,000. Contractor reserves the right to request evidence of coverage.

16. PRICE.

Buyer shall not be billed at prices higher than stated on this Purchase Contract unless authorized by a purchase contract change order issued and signed by Buyer. Seller represents that the price charged for the goods covered by this Purchase Contract is the lowest price charged by Seller to buyers of a class similar to Buyer under conditions similar to those specified in this Purchase Contract, and that prices comply with applicable government regulations in effect at time of quotation, sale and delivery. Seller agrees that any price reduction made in goods covered by this Purchase Contract subsequent to the placement of this order, but prior to delivery, will be applicable to this Purchase Contract.

17. COMPLIANCE WITH LAWS.

Seller represents that it has complied, and will continue to comply during the performance under this Purchase Contract, with all federal, provincial, and local laws and regulations from which liability may accrue to Buyer.

18. **TITLE.**

Seller warrants that the goods subject to this Purchase Contract are free and clear of all liens and encumbrances whatsoever, and that Seller shall have good and marketable title to same, and agrees to defend and hold Buyer free and harmless against any and all claimants to the goods which are the subject of this Purchase Contract.

19. **DISPUTES.**

This Purchase Contract shall be governed by the laws of the place of work. In addition, Buyer shall have the exclusive and unilateral right, at its option, to require that any dispute arising under this Purchase Contract be resolved in the alternative dispute resolution forum of its choosing, or that Seller be made a party to any other litigation or arbitration which relates to the Project, provided that said forum is an independent forum and impartial to the parties. Buyer may also require that a mediation occur as a prerequisite to the commencement or maintenance of any litigation or arbitration. This provision is for the unilateral exercise of Buyer only and cannot be invoked by Seller without Buyer's consent.

In the event of any dispute or claim between Buyer and Owner which directly or indirectly involves the goods provided or to be provided by Seller, or in the event of any dispute or claim between Buyer and Seller caused by or arising out of conduct for which Owner maybe responsible, Seller agrees to be bound to Buyer to the same extent that Buyer is bound to Owner by the terms of the Prime Contract and by any and all procedures and resulting decisions, findings, determinations, or awards made by the person so authorized in the Prime Contract, or by an administrative agency, board, court of competent jurisdiction or arbitration. If any dispute or claim of Seller is prosecuted or defended by Buyer, Seller agrees to cooperate fully with Buyer and to furnish all documents, statements, witnesses and other information required by Buyer for such purpose and shall pay or reimburse Buyer for all expenses and costs, including reasonable attorneys' fees incurred in connection therewith, to the extent of Seller's interest in such claim or dispute.

Seller agrees to be bound by procedure and final determinations as specified in the Prime Contract 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, pending final determination of any dispute resolution procedure between Owner and Buyer. The timely presentation, cooperation, and participation by Seller in any determination of a dispute under the contract with the person with whom Buyer has contracted, including any and all appeals under the disputes provisions of such contract, shall be conditions precedent to pursuit of any action by Seller against Buyer with respect to any such claim or dispute. It is expressly understood and agreed that, as to any and all claims asserted by Seller in connection with this project arising from the actions or fault of Owner, Buyer shall not be liable to Seller for any greater amount than Owner is liable to Buyer, less any markups or costs incurred by Buyer. As to any claims asserted by Seller for or on account of acts or omissions of Owner or its agents or design professionals, at the sole option of Buyer, Seller agrees to prosecute such claims in Buyer's name. For any amount recovered or collected (whether through proceedings or settlement) by Seller, Buyer shall be entitled to ten percent (10%) of such amount received or collected as its mark-up for such claims. Seller shall have full responsibility for preparation and presentation of such claims and shall bear all expenses including attorneys' fees.

20. **TAKEOVER.**

If in the opinion of the Buyer, Seller shall at any time (1) refuse or fail to employ a sufficient number of properly skilled workers to provide a sufficient quantity of suitable goods, (2) fail to diligently provide the goods in the order and sequence directed and/or according to then current Buyer's schedule, (3) cause, by any act or omission, the stoppage or delay of or interference with the work of Buyer or of any other builder or Seller including, but not limited to, acts or omissions arising out of or relating to any picketing, strikes or other labour conditions, (4) fail to correct or replace any damaged or defective materials, (5) fail to comply with all provisions of the Purchase Contract or the Prime Contract Documents, (6) be adjudged bankrupt, or make a general assignment for the benefit of its creditors, (7) have a receiver appointed, or (8) become insolvent or a debtor in reorganization proceedings, then, Buyer may take the following actions. Buyer, at its option and in addition to and without prejudice to any other rights afforded by this Purchase Contract or by law, and without notice to the sureties, may (i) take such steps as are necessary to overcome the condition, in which case the Seller shall be liable to Buyer for the cost of doing so; (ii) terminate the Purchase Contract for default, or (iii) seek specific performance of Seller's obligations under the Purchase Contract, it being agreed by Seller that specific performance may be necessary to avoid irreparable harm to Buyer and/or Owner.

Before taking any of the above actions, the Buyer must first give Seller forty-eight (48) hours written notice transmitted by facsimile or otherwise, and the condition specified in such notice shall not have been eliminated within the forty-eight (48) hours.

In the event of termination for default, Buyer may, at its option, do any or all of the following: (a) require Seller to assign to Buyer any or all subcontracts and purchase contracts involving the Project, or (b) either itself, or through others, provide the goods by whatever method Buyer may deem expedient. In case of termination for default, Seller shall not be entitled to receive any further payment until the goods shall be fully delivered and accepted by Owner. At that time, if the unpaid balance of the price to be paid shall exceed the expense incurred by Buyer, the excess shall be paid by Buyer to Seller. If the amount due Buyer shall exceed the unpaid balance, the Seller shall pay Buyer the difference.

Buyer shall have the right to terminate this Purchase Contract for convenience and without cause, by providing Seller with a written notice of termination to be effective upon receipt by Seller. If Seller is terminated for convenience, it shall be paid the amount representing costs which are due from Owner for Seller's work; provided, however, that payment by Owner to Buyer shall be a condition precedent to Buyer's payment to Seller.

21. **ENTIRE AGREEMENT.**

This Purchase Contract, together with any documents attached or incorporated, constitutes the entire agreement between the parties, and supersedes all previous communications between them, either oral or written. No modification of this Purchase Contract and no waiver of rights under this Purchase Contract shall be valid or binding on the parties unless the same be in writing. Failure of the Buyer to insist upon strict performance of any term or condition of the Purchase Contract, or to exercise any option in any one or more instances, shall not be construed to be a waiver of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect. The partial or complete invalidity of any one or more conditions or sentences of the Purchase Contract shall not affect the validity or continuing force and effect of any other condition.

