

TERMS AND CONDITIONS OF PURCHASE ORDER

1.0 ACCEPTANCE AND AGREEMENT

- 1.1** Seller shall acknowledge acceptance of this Purchase Order (including any drawings, specifications and other documents attached or referred to in this Purchase Order) by signing two copies hereof in the "ACCEPTED" section on the face hereof and promptly returning both signed copies to BUYER. If for any reason Seller should fail to sign and return to BUYER a copy of this Purchase Order, any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter hereof (including, without limitation, the delivery of goods or materials or the performance of services) shall constitute acceptance by Seller of this Purchase Order and all of its terms and conditions.
- 1.2** This Purchase Order (together with any drawings, specifications, and other documents attached or referred to in this Purchase Order) forms and constitutes the entire agreement between BUYER and Seller, and all prior negotiations, proposals, and/or other writings in any way related to this Purchase Order or the goods and/or services covered hereby are superseded by this Purchase Order.
- 1.3** Should Seller elect to use its own or any other form of acceptance or acknowledgement of this Purchase Order, any terms proposed in Seller's acceptance which add to, vary from, or conflict with the terms herein are hereby objected to, regardless of whether same would materially alter the terms hereof. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may hereafter be modified only by written instrument executed by the authorized representatives of both parties. Any reference on the face hereof to Seller's quotations, bid documents or proposals are for identification or clarification purposes only and do not constitute acceptance by BUYER of any terms, conditions, provisions or limitations contained in such documents.
- 1.4** If this Purchase Order has been issued by BUYER in response to an offer from Seller, and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of this Purchase Order by BUYER shall constitute an acceptance of such offer subject to the express condition that the Seller assent to such additional and/or different terms herein and acknowledge that this Purchase Order constitutes the entire agreement between BUYER and Seller with respect to the subject matter hereof and the subject matter of such offer and Seller shall be deemed to have so assented and acknowledged unless Seller notifies BUYER to the contrary in writing within ten (10) days of receipt of this Purchase Order.
- 1.5** This Purchase Order relates to the goods and/or services to be provided for the project identified on the face hereof (the "Project"). Seller acknowledges that BUYER has made available to it, at BUYER's offices, all contracts, agreements, specifications, drawings, plans, design documents, etc. regarding the Project (the "Contract Documents") between BUYER and the Prime Contractor and/or Project Owner, which Contract Documents are incorporated herein by reference, whether or not specifically identified on the face hereof. With respect to the goods and/or services provided by Seller under this Purchase order, Seller assumes toward BUYER all liabilities and responsibilities of BUYER to the Project Owner, whether imposed by the Contract Documents or by law. Anything that may be called for in the Contract Documents, but is not required by the specifications and

drawings attached hereto (if any) or shown on the specifications and drawings but not called for in the Contract Documents, shall be considered as called for on both. In the event there are any ambiguities, express conflicts, inconsistencies or discrepancies between the contract documents and this Purchase Order, or in any plans, specifications or drawings provided by BUYER, Seller shall immediately notify BUYER, in writing, with respect thereto and shall comply with any written instructions issued by BUYER to resolve the matter. Absent such notification, it shall be the responsibility of Seller to ensure that the goods and/or services provided under this Purchase Order conform to the needs and requirements of BUYER. Seller acknowledges the Owner/BUYER Contract Documents in certain cases may require assignment of the Seller/BUYER Purchase Order's responsibilities and expressed or implied warranties to the Owner or other related parties. Seller accepts the assignment requirements of the Owner/BUYER Contract Documents.

- 1.6** Seller shall be solely and fully responsible for the accuracy of any specifications, shop drawings, or other documents produced by it in connection with the goods and/or services to be provided by it under this Purchase Order, regardless of any review thereof made by BUYER or others, and Seller shall indemnify and hold harmless BUYER, the Project Owner, and any third parties indemnified by BUYER or to whom it is found liable with respect to any loss, claim, damage, liability, cost or expense (including attorney's fees and other costs of litigation) suffered or incurred by BUYER as a result of any alleged deficiency or inaccuracy therein or the failure of any goods to perform in accordance therewith. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to this Purchase Order, this provision to indemnify and hold harmless shall not apply to the extent that it requires Seller to indemnify, defend or hold harmless BUYER, the Project Owner, and any third parties indemnified by BUYER against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of BUYER, the Project Owner, and any third parties indemnified by BUYER, its agent or employee, or any third party under the control or supervision of BUYER, the Project Owner, and any third parties indemnified by BUYER, other than Seller or its agent, employee or subcontractor of any tier.

2.0 CHANGES AND SUBSTITUTIONS

- 2.1** BUYER shall have and hereby reserves the right to make written changes in the drawings, specifications, and other documents attached or referred to in this Purchase Order. If Seller believes that such changes affect the price(s) and/or delivery date(s) specified for the goods and/or services, which are the subject matter hereof, Seller must so notify BUYER, in writing (with supporting documentation) within ten (10) calendar days of Seller's receipt of BUYER's written notice of change. Seller waives any right to request any adjustment of price(s) or delivery date(s) unless BUYER receives such a written request in writing within said ten (10) day period.
- 2.2** BUYER and Seller shall mutually agree in writing upon the equitable adjustments, if any, to be made pursuant to Paragraph 2.1 in order to reflect any increase or decrease in the price(s) and/or delay or acceleration of the specified delivery date(s). Seller shall not delay or suspend its

performance of any unaffected portion of this Purchase Order while Seller and BUYER are in the process of negotiating such adjustments.

3.0 PRICE AND PRICE WARRANTY

3.1 The prices noted on the face of this Purchase Order are firm and not subject to escalation unless expressly so noted, and this Purchase Order must not be filled at price(s) higher than those shown on the face hereof. The stated price(s) reflect the total price(s) to be paid for the referenced goods and/or work, including sales taxes, other taxes, freight, packaging, insurance delivery and/or any other charges or costs. BUYER shall be liable for no additional charges, costs or conditions unless it so agrees in writing.

4.0 INSPECTION RIGHTS

4.1 BUYER shall have the right, upon reasonable advance notice to Seller, to inspect during manufacture, assembly or testing (and at any other time before shipment) any goods to be shipped by Seller to fill this Purchase Order, and for that purpose Seller agrees to grant BUYER reasonable access to its facilities. Seller (and/or Seller's suppliers) shall notify BUYER at least five (5) calendar days prior to any test to be made of the goods to be supplied hereunder, and shall immediately notify BUYER of any delay or postponement thereof.

4.2 BUYER's exercise of its pre-shipment inspection rights shall in no way limit or restrict its rights to inspect all goods for their conformity to the terms of this Purchase Order after the arrival of the goods at BUYER's facility or any other specified destination, and BUYER shall be entitled to reject the goods (or any portion thereof) or to revoke its acceptance thereof, even with respect to any defects which could have been discovered by pre-shipment inspection. This right of inspection and rejection shall continue so long as BUYER is obligated to Project Owner for repair or replacement of any defects in Seller's goods.

4.3 Defective or nonconforming goods may be returned to Seller, at Seller's expense, or held by BUYER for disposition or return in accordance with written instructions for Seller. Seller shall pay BUYER reasonable storage charges with respect to nonconforming goods stored by BUYER pending return or disposition. These remedies shall be cumulative of any others available to BUYER under this Purchase Order or at law.

5.0 GENERAL WARRANTIES

5.1 Seller expressly warrants that all goods covered by this Purchase Order shall be new, shall conform to the Contract Documents and any specifications, drawings, samples or other description upon which this Purchase Order is based, shall be fit and suitable for the specific purpose(s) intended (which are known to Seller), merchantable, of good material and workmanship and free from defects, latent or patent.

5.2 With respect to goods of Seller's design, Seller represents that same will be free from all defects in design and will be manufactured of proper materials, sizes and capacities to perform satisfactorily under the full range of operating and/or design conditions specified herein or in the Contract Documents. Seller further represents and warrants that such goods do not violate or infringe upon any license, patent or trademark rights or interests of any third party, and that same represent Seller's highest, best, and current design, unless otherwise specified.

5.3 Seller expressly warrants that all goods shall be delivered free of lien defects, security interests, liens, encumbrances, and/or other claims of third parties (including, but not limited to, claims of patent or trademark infringement) and that all work and services will be performed in strict accordance with all local, state and federal laws, regulations, guidelines, building and construction codes, ordinances, rules and requirements and applicable safety regulations, to the extent same apply thereto. Payment for, inspection, test, acceptance or use of the goods furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive payment, inspection, test, acceptance, use or termination of this Purchase Order as hereinafter provided.

5.4 With respect to all work or services to be provided by seller under this Purchase Order, Seller represents and warrants that same will be performed timely, in a good and workmanlike fashion, according to the highest and best industry standards.

5.5 The warranties herein shall run to BUYER, its successors and assigns, and to all customers and users of the goods and services provided by seller under this Purchase Order, including, but not limited to, the Project Owner. Seller assigns to BUYER and the Project Owner any and all manufacturer's or vendors' warranties available to Seller with respect to the goods, which are the subject matter of this Purchase Order.

5.6 Seller agrees to replace or correct defects in any goods or services not conforming to the terms of this Purchase Order or the foregoing warranties (and to repair all portions of the Project affected thereby) promptly, at its sole cost and expense, when notified of such nonconformity by BUYER at any time during the twelve (12) months following completion of the Project unless contract documents require a longer warranty (regardless of the date of delivery or installation of the goods). In the event of Seller's failure to correct defects in or replace nonconforming goods promptly, BUYER, after reasonable notice to Seller, may make such corrections or replace such goods (and repair all portions of the Project affected thereby) and charge Seller for all costs incurred by BUYER in connection therewith.

5.7 The warranties of Seller herein described are in addition to, and not in exclusion or limitation of, any and all other warranties of Seller, expressed or implied, available to BUYER, its customers and/or users of the goods and services covered by this Purchase Order.

6.0 PAYMENT

6.1 Payment for the goods and/or work covered by this Purchase Order shall be made by BUYER according to the terms and subject to the discounts specified on the face hereof, for materials delivered to the Project in conformance to this Purchase Order and other Contract Documents, and upon receipt of a Conditional Waiver and Release On Progress Payment and a Conditional Waiver and Release On Final Payment, notarized and in the forms prescribed by Subchapter L of Chapter 53 of the Texas Property Code as applicable, from Seller and its suppliers, and subject to other terms and conditions herein, unless this Purchase Order is issued in conjunction with or pursuant to a separate written contract between BUYER and Seller, in which event the terms of payment specified in such contract shall control.

6.2 BUYER shall pay to Supplier monthly or other periodic progress payments as specified by the Contract Documents to the extent the goods and/or services are

approved by BUYER and/or Architect and paid by Owner to BUYER; subject however, to all other provisions of this Agreement. Supplier and BUYER have addressed in their negotiations the contingency that the Owner may not pay BUYER for goods and/or services furnished by Supplier, and Supplier has agreed and does hereby agree to accept the risk of non-payment by the Owner, for whatever reason, it being specifically understood that payment by the Owner to BUYER for Supplier's goods and/or services, whether for progress payments or final payment, is a condition precedent to BUYER's liability to pay Supplier. Supplier's price for the goods and/or services includes the assumption on this risk.

6.3 BUYER will pay Seller for goods timely furnished in accordance with the Contract Documents within seven (7) days of receiving payment for those goods from the Owner. In the event of non-payment by Owner, and if paragraph 6.2, or any other contingent payment provision herein, is held to be unenforceable for any reason, BUYER acknowledges it will be obligated to pay Seller within a reasonable time for work completed in accordance with this Purchase Order and the Contract Documents, subject to all other terms and conditions of this Purchase Order. For the purposes of determining the timing of payment under these circumstances, the parties hereby acknowledge and agree that a reasonable time for payment to Seller in the case of Owner non-payment is within 120 days after BUYER's submission of a payment request to Owner that includes the work for which Seller seeks payment or, if litigation or arbitration between BUYER and Owner that involves the monies sought by Seller is instituted within that time, then within 60 days of final adjudication of any such litigation or arbitration.

6.4 As an alternative to, or in conjunction with, BUYER pursuing a claim against Owner for payments due to Seller for work on the Project, BUYER may assign its contractual rights against Owner for such funds as Seller may be entitled to for such work pursuant to its Purchase Order, which remain unpaid due to failure of payment by Owner to BUYER for whatever reason, and such assignment shall operate as full accord and satisfaction of any remaining debt to Seller by BUYER for work performed in accordance with the Subcontract. Seller hereby agrees to accept such assignment in lieu of any other form of payment for its work, and to release and discharge any and all claims for those funds against BUYER upon receipt of such assignment.

6.5 BUYER shall be under no obligation to make any payment to Seller for any costs related to work performed on the Project until Seller has furnished proof, in a form acceptable to BUYER, of the satisfaction of all debts of Seller related to the monies sought in any application for payment. With each payment application, including progress payments, final payment, retainage and/or any requested change order, Seller shall, as a condition precedent to any obligation by BUYER to pay Seller, submit proof of payment for all labor, material and equipment included in its application for payment to BUYER, along with such releases, lien waivers or other evidence or protection BUYER may reasonably require. Failure at any time by BUYER to enforce the terms of this provision shall not be construed as a waiver of its right to enforce these requirements at any other time.

7.0 SHIPMENT AND DELIVERY OF GOODS

7.1 The terms of delivery (including quantities, date(s), routing and destination) are as stated on the face of this

Purchase Order. If not so stated, contact the BUYER principal office for delivery instructions.

7.2 The obligation of Seller to meet timely delivery dates, specifications and quantities set forth herein is of the essence of this Purchase Order. Shipments in greater or lesser quantity than ordered may be returned at Seller's expense unless written authorization for excess or short shipment is issued by BUYER. Without limiting its other rights or remedies, if Seller's deliveries (or any part thereof, if partial shipments are permitted) fail to meet specified schedule(s) therefor, BUYER may direct expedited manufacture, assembly or delivery and charge any excess cost incurred by BUYER as a result thereof to Seller and/or cancel all or part of this order as provided below. Goods which are delivered in advance of schedule are delivered at the risk of Seller and may, at BUYER's option, be returned at Seller's expense for proper delivery and/or have payment thereof withheld by BUYER until the date that the goods are actually scheduled for delivery.

7.3 Seller will promptly notify BUYER in writing of any and all events which might affect the obligation of Seller to make deliveries at the specified times or in the specified quantities. The fact that such notice is given, however, shall not affect or diminish any obligation of Seller.

7.4 Unless expressly so noted on the face of this Purchase Order, partial shipments are not permitted. If partial shipments are permitted, each shipment must be accompanied by identifying documents and itemized packing list(s). BUYER's count shall be accepted as final and conclusive on all shipments not accompanied by Seller's itemized packing list.

7.5 Unless otherwise noted on the face of this Purchase Order, no charge(s) will be allowed for packing, shipment, or handling. Seller, at its sole cost and expense, shall immediately replace (via expedited delivery, if so requested by BUYER) any goods lost or damaged in transit as a result of improper packaging or handling. Unless otherwise noted on the face of this Purchase Order, risk of loss or damage to the goods in transit shall be borne by Seller, whose responsibility it shall be to file all claims with the carrier.

8.0 PATENT INFRINGEMENT AND INDEMNITY

8.1 Seller agrees upon receipt of a written request by BUYER to promptly assume full responsibility for the defense of any suit or proceeding which may be brought against BUYER, its successors, assigns and customers and the users of the goods supplied hereunder by Seller for alleged patent infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this Purchase Order, except for goods manufactured entirely to Contract Document requirements. Seller further agrees to indemnify and hold harmless BUYER against any and all expenses, losses, royalties, profits and damages, including court costs and attorney's fees, resulting from the bringing of such suit or proceedings, including any settlement or decree of judgement entered therein. BUYER, at Seller's expense, may be represented by and actively participate through its own counsel in any such suit or proceedings if it so desires. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to this Purchase Order, this provision to indemnify and hold harmless shall not apply to the extent that it requires Seller to indemnify, defend or hold harmless BUYER against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation,

standard, or rule, or the breach of contract of BUYER, its agent or employee, or any third party under the control or supervision of BUYER, other than Seller or its agent, employee or subcontractor of any tier.

9.0 DAMAGES AND OFFSETS

9.1 Seller shall be liable for, hereby indemnifies and holds harmless BUYER from any and all delays or other damages (including liquidated damages) for which BUYER may or may not become liable to the Project Owner or other third Parties solely or in part because or on account of the failure of Seller to deliver goods timely and/or perform services under the Purchase Order. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to this Purchase Order, this provision to indemnify and hold harmless shall not apply to the extent that it requires Seller to indemnify, **11.0** defend or hold harmless BUYER against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of BUYER, its agent or employee, or any third party under the control or supervision of BUYER, other than Seller or its agent, employee or subcontractor of any tier.

9.2 If BUYER shall have any claims against Seller, whether arising out of this Purchase Order or otherwise, then BUYER, without waiving or limiting any other rights or remedies it may have against Seller, shall be entitled from time to time to offset the amount thereof from any amounts due or owing by BUYER to Seller in connection with this Purchase Order (or any other Purchase Order or contract with Seller).

10.0 TERMINATION UPON DEFAULT BY SELLER

10.1 BUYER may terminate this Purchase Order by written notice to Seller upon the occurrence of any of the following:

10.1.1 Seller files for bankruptcy or involuntary bankruptcy proceedings are initiated against Seller and Seller fails, within ten (10) days of BUYER's request, to provide adequate assurances to BUYER that Seller can and will fulfill its obligations hereunder;

10.1.2 Seller makes a general assignment for the benefit of its creditors;

10.1.3 A receiver is appointed for Seller or any substantial portion of Seller's assets and properties; or

10.1.4 Seller is in default under any provision of this Purchase Order, and default is not cured by Seller to BUYER's reasonable satisfaction within 48 hours of Seller's receipt of BUYER's written notice thereof.

10.2 Termination by BUYER under the provisions of Paragraph 10.1 shall in no way prejudice or restrict any other rights and remedies available to BUYER

10.3 Upon termination pursuant to this Paragraph 10.1 BUYER may complete the performance of this Purchase Order by any reasonable means, and Seller shall be liable for any additional cost or expense incurred by BUYER in completing or securing completion of this Purchase Order. Upon the request of BUYER, Seller shall assign and/or deliver to BUYER any work in progress at the time of termination.

10.4 BUYER shall be entitled to retain any monies due Seller with respect to goods supplied and/or services performed prior to the date of termination in order to offset the anticipated additional costs and expenses associated with

completing or securing completion of this Purchase Order and any damages suffered or sustained by BUYER as a result of Seller's default.

10.5 BUYER may choose to wave any default by Seller without relinquishing the right to enforce any provision(s) of this Paragraph 10.0 in the case of later defaults by Seller with respect to the same or any other aspect of Seller's performance hereunder. In addition, Seller shall, upon demand by BUYER, supplement its work force, work overtime or otherwise expedite its performance and/or delivery of goods and materials hereunder, without cost, charge or expense to BUYER, in the event BUYER shall deem it necessary for Seller to do so in order to prevent a breach or default by Seller under this Purchase Order.

TERMINATION FOR BUYER'S CONVENIENCE

11.1 At any time, BUYER may, for its convenience, cancel, terminate or suspend all or any separable part of this Purchase Order by giving written notice thereof to Seller. Upon its receipt of such notice, Seller shall:

11.1.1 Discontinue all work so terminated and suspend all further shipments;

11.1.2 Place no additional orders for parts, materials, or labor associated with the goods and/or services the subject of this Purchase Order; and

11.1.3 Preserve and protect all completed work on hand but not yet shipped, all work in progress (whether in Seller's facilities or those of its suppliers) and all goods and materials on hand purchased for or committed to this Purchase Order, delivering or disposing of same as BUYER shall direct in writing.

11.2 Upon a termination of this Purchase Order by BUYER for its convenience, BUYER and Seller shall mutually agree to such equitable termination payment, if any, as shall be due Seller as a result thereof. Such termination payment shall be based upon that portion of the goods and/or services satisfactorily provided or performed by Seller through the date of termination, plus reasonable and necessary expenses incurred by Seller (and documented to BUYER's satisfaction) as a result of the termination (including any expenses incurred in disposing of goods or materials on hand), less amounts previously paid by BUYER. Seller shall not be entitled to reimbursement for or recover of any loss of prospective profit on portions of this Purchase Order terminated by BUYER, any contribution to Seller's overhead or terminated work, or any other incidental or consequential damages allegedly suffered or sustained by Seller as a result of such termination, and in no case shall such payments, in the aggregate exceed the total amount of the Purchase Order less any applicable offsets.

11.3 Upon a termination of this Purchase Order by BUYER for its convenience, Seller shall deliver or assign (with all applicable warranties) or dispose of all goods remaining in its possession, as BUYER shall direct in writing.

11.4 Any claims of Seller for termination payments under the provision of this Paragraph 11.0 must be asserted in writing within ten (10) days of Seller's receipt of BUYER's notice of termination, and the amount of such claim and the documentary support therefore must be stated in detail in writing within ten (10) days of Seller's receipt of BUYER's notice of termination, and the amount of such claim and the documentary support therefor must be stated in detail in writing within ten (10) days thereafter failing which Seller shall be deemed to have waived such claims.

12.0 FORCE MAJEURE

12.1 Neither BUYER nor Seller shall be liable to the other for any failure to perform in accordance with the terms of this order if such failure arises out of any cause(s) or event(s) beyond its reasonable control and without its fault or negligence including, but not limited to: fire, floods, accidents, and other acts of God. However, no such failure of Seller to perform by reason of default or delay by any of its subBUYERS or suppliers shall be excusable unless such default or delay arises out of a cause or event beyond the reasonable control of and without the fault or negligence of both Seller and such subBUYER or suppliers. Seller shall advise BUYER in writing of the cause of any delay by reason of causes or events beyond its control and the actions it has taken or is taking to mitigate the consequences thereof within two (2) days of occurrence. Nothing herein shall be construed to limit the rights of BUYER to terminate this Purchase Order at any time for and at its convenience as hereinabove provided.

13.0 TITLE

13.1 Seller warrants full and unrestricted title to BUYER for all goods and/or related services furnished by Seller under this Purchase Order, free and clear of any and all liens, restrictions, reservation, security interests, and encumbrances. Seller's submission of any invoice or other request for payment or reimbursement under this Purchase Order shall constitute Seller's representation that it has paid for this materials and supplies and/or performed the work and services described in or covered by their invoice.

14.0 INDEMNIFICATION

14.1 **IN ADDITION TO THE SPECIFIC INDEMNITIES SET FORTH ABOVE, AND IN CONSIDERATION OF THE PAYMENTS TO BE MADE TO SELLER UNDER THE TERMS OF THIS PURCHASE ORDER, EXCEPT WITH RESPECT TO CLAIMS RELATING TO BODILY INJURY OR DEATH OF AN EMPLOYEE AS DEFINED IN 14.2 BELOW, SELLER AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS (COLLECTIVELY "INDEMNIFY") BUYER, ITS PARTNERS, MEMBERS, DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES, AND ANY PARTIES REQUIRED TO BE INDEMNIFIED BY BUYER UNDER THE CONTRACT DOCUMENTS (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, INJURIES, JUDGEMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES (COLLECTIVELY "CLAIMS"), FOR BODILY OR PERSONAL INJURIES, INCLUDING DEATH, TO ANY PERSON OR DAMAGES TO OR DESTRUCTION OF PROPERTY, INCLUDING THE LOSS OF USE THEREOF, ACTUALLY OR ALLEGEDLY OCCASIONED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE GOODS AND/OR SERVICES OR THIS PURCHASE ORDER, INCLUDING BUT NOT LIMITED TO CLAIMS OCCASIONED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE NEGLIGENCE, GROSS**

NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, VIOLATION OF ANY STATUTE, RULE OR REGULATION OR OTHER ACT OR OMISSION BY SELLER, ITS EMPLOYEES, AGENTS OR ANY SUBCONTRACTOR OF SELLER OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, OR ANY OTHER PARTY FOR WHOSE ACTS SELLER IS LIABLE, AND INCLUDING BUT NOT LIMITED TO ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES INCURRED BY THE INDEMNIFIED PARTIES IN DEFENSE OF SUCH CLAIMS. SELLER'S OBLIGATION TO INDEMNIFY SHALL APPLY EVEN IF SUCH CLAIMS ARE ACTUALLY OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE STRICT LIABILITY, OR THE ACTS, OMISSIONS, OR NEGLIGENCE OF AN INDEMNIFIED PARTY, EVEN IF SUCH NEGLIGENCE OR OTHER ACTS OR OMISSIONS ARE ACTIVE OR PASSIVE, DIRECT OR INDIRECT, SOLE OR CONCURRENT. THIS INDEMNITY AGREEMENT IS INTENDED TO INDEMNIFY THE AFOREMENTIONED INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, AS PROVIDED ABOVE. NOTWITHSTANDING THE FOREGOING, IF SUBCHAPTER C OF CHAPTER 151 OF THE TEXAS INSURANCE CODE APPLIES TO THE ORDER, THIS INDEMNITY PROVISION SHALL NOT APPLY TO THE EXTENT THAT IT REQUIRES SELLER TO INDEMNIFY AN INDEMNIFIED PARTY AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE INDEMNIFIED PARTY, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNIFIED PARTY, OTHER THAN SELLER OR ITS AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER.

14.1 14.2 **INDEMNITY FOR EMPLOYEE CLAIMS: SELLER AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS (COLLECTIVELY "INDEMNIFY") BUYER AND ANY OTHER PARTIES REQUIRED TO BE INDEMNIFIED BY BUYER UNDER THE CONTRACT DOCUMENTS AND THEIR REPRESENTATIVES, PARTNERS, MEMBERS, DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, INVITEES OR LICENSEES (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, INJURIES, JUDGEMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES (COLLECTIVELY "CLAIMS") , FOR BODILY INJURY OR DEATH OF ANY EMPLOYEE OF SELLER, ITS AGENTS, OR ITS SUBCONTRACTORS OF ANY TIER (COLLECTIVELY "EMPLOYEE" FOR THE**

PURPOSE OF THIS SECTION), ACTUALLY OR ALLEGEDLY OCCASIONED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE GOODS AND/OR SERVICES OR THIS PURCHASE ORDER, INCLUDING BUT NOT LIMITED TO CLAIMS DUE TO NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, VIOLATION OF ANY STATUTE, RULE OR REGULATION OR OTHER ACT OR OMISSION BY SELLER, ITS EMPLOYEES, AGENTS OR ANY SUBCONTRACTOR OF SELLER OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, OR ANY OTHER PARTY FOR WHOSE ACTS SELLER IS LIABLE. SELLER'S OBLIGATION TO INDEMNIFY SHALL APPLY EVEN IF SUCH CLAIMS ARE ACTUALLY OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, OR NEGLIGENCE OF AN INDEMNIFIED PARTY EVEN IF SUCH NEGLIGENCE OR OTHER ACTS OR OMISSIONS ARE ACTIVE OR PASSIVE, DIRECT OR INDIRECT, SOLE OR CONCURRENT. THIS INDEMNITY AGREEMENT IS INTENDED TO INDEMNIFY THE AFOREMENTIONED INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, AS PROVIDED ABOVE.

15.0 WAIVER

15.1 BUYER's failure to insist upon performance of or strict adherence to any of the terms and conditions of this Purchase Order or its failure to exercise any right or privilege granted it hereby shall not constitute a waiver of such term, condition, right or privilege. No waiver by BUYER of a breach by Seller of any term or condition hereof shall operate as or constitute a waiver of any other or subsequent breach of such term or condition and no course of dealing or performance shall be thereby created or inferred.

16.0 APPLICABLE LAW

16.1 The rights, duties and obligations of the parties hereunder shall be governed and construed in accordance with the laws of the State of Texas, excluding any conflicts or laws or rules which would refer its interpretation to the laws of another jurisdiction. At BUYER's option, all claims, disputes, and other matters in question arising out of or raising to this Purchase Order, or the breach thereof, may be decided by arbitration, which shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect with a single arbitrator under regular track procedures unless otherwise elected by BUYER. All arbitration proceedings will be in Houston, Texas. Further, Seller agrees that in the event Owner and BUYER, or BUYER and any other entity, are involved in an arbitration arising out of or relating to the Contract Documents which pertains in whole or in part to work performed by Seller under this agreement, Seller shall, by consolidation join in the said arbitration and any such claims, disputes, or other matters shall then be determined in the consolidated arbitration proceeding. This agreement to arbitrate and any other written agreement to arbitrate shall be specifically enforceable. It is agreed that the work performed and/or materials or equipment provided pursuant to this agreement affects and involves interstate commerce. The award rendered by the

arbitrators shall be final and judgement may be entered upon it in accordance with the applicable law in the court having jurisdiction thereof. Any legal action by Seller against BUYER or Owner arising out of or related to the Work, the Project or this Subcontract shall be commenced not later than twenty-five (25) months from the date of substantial completion of the Project or forever waived and released by Seller.

16.2

Should BUYER employ an attorney to enforce any of the provisions hereof, or to protect its interest in any matter arising under this Purchase Order, or to collect damages for the breach of this Purchase Order, or to prosecute or defend any suit resulting from this Purchase Order, or to recover on the surety bond given by Seller under this Purchase Order, Seller and its surety, jointly and severally, agree to pay BUYER all reasonable costs, charges, expenses, and attorney's fees expended or incurred therein. Venue for any state court action taken against BUYER shall be in Harris County, Texas, and venue for any federal court action taken against BUYER shall be in the Southern District of Texas, Houston Division.

17.0 INSURANCE

17.1

Seller represents and warrants to BUYER that it currently maintains (and will continue to maintain), through reputable insurance carriers, comprehensive general liability insurance providing Seller coverage(s) for and against any liabilities or obligations of the Seller with respect to the goods and materials covered by this Purchase Order (including any contractually assumed liabilities) in accordance with Exhibit A entitled "Contractor's Insurance Requirements of Subcontractor" which is incorporated by reference herein as if set forth in full (or for such greater amounts as required by the Contract Documents).

17.2

In addition to the comprehensive general liability insurance coverages required above, if the goods and materials covered by this Purchase Order are of Seller's design and/or manufacture, Seller agrees, at BUYER's request, to obtain and maintain, at its sole cost and expense, a policy or policies of Products Liability insurance covering the goods and materials. Such policy or policies shall be in such amounts, and shall contain such provisions (including a Vendor's endorsement naming BUYER as an additional insured and a provision that the coverage afforded thereby shall not be terminated without at least thirty (30) days prior written notice to BUYER) as shall be satisfactory to BUYER. Notwithstanding the foregoing or anything in Exhibit A or the Purchase Order to the contrary, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to this Purchase Order, the additional insured status required hereunder shall not require or provide coverage the scope of which is prohibited under Subchapter C of Chapter 151 of the Texas Insurance Code for an agreement to indemnify, hold harmless or defend.

18.0 TITLE

18.1

All property owned or furnished by BUYER (including, but not limited to all engineering or shop drawings, patterns, tools, components or materials supplied by BUYER) which is used or intended for use by Seller in connection with its performance under this Purchase Order or which is included, assembled or incorporated in or into the goods supplied by Seller under this Purchase Order (the: "Furnished Property") shall be and remain the property of BUYER, which shall retain all right, title and interest therein. Immediately upon Seller's receipt

thereof, all Furnished Property shall be visibly marked, tagged or otherwise identified as BUYER's property and segregated and separated from the property of Seller or any third parties. All furnished Property shall be used only for this Purchase Order. Seller shall assume all liability for and maintain and repair any furnished Property not consumed or incorporated in the goods supplied by Seller under this Purchase Order and shall return the same to BUYER in its original condition, reasonable wear and tear excepted, and when furnished Property is no longer required hereunder, Seller shall furnish BUYER with a list thereof and shall comply with any BUYER disposition instructions applicable thereto.

18.2 All goods and materials purchased by Seller from third parties for inclusion, assembly or incorporation in or into the goods to be supplied by Seller under this Purchase Order (the "Purchased Property") shall be (i) visibly marked, tagged or otherwise identified to this Purchase Order as BUYER's property immediately upon Seller's receipt thereof, regardless of the date of delivery thereof to BUYER, (ii) segregated and separated from the property of Seller or any third parties immediately upon Seller's receipt thereof, and (iii) used only for this Purchase Order. Regardless of the date of ultimate delivery thereof to BUYER, title to all Purchased Property shall pass to and vest in BUYER upon the earliest of (i) the vendor's identification thereof to Seller's contract of purchase, regardless of the date of shipment or delivery to Seller, to the extent the vendor has been paid therefor, in whole or in part, or (ii) upon identification and shipment thereof by the vendor (if purchased by Seller under a "shipment" contract), or (iii) upon identification and delivery of such property to Seller by the vendor thereof (if purchased by Seller under a "delivery" contract).

18.3 All goods and materials provided or to be provided by Seller for inclusion, assembly or incorporation in or into the goods to be supplied by Seller (including, but not limited to, new materials and components from Seller's inventory), the cost of which is reimbursable to Seller

under this Purchase Order (the "Other Property") shall be (i) segregated and separated from the inventory or property of Seller or any third party immediately upon Seller's acceptance of this Purchase Order (ii) visibly marked, tagged or otherwise identified for use in the performance of this Purchase Order, and (iii) used only for this Purchase Order. Title to all Other Property shall pass to and vest in BUYER upon the first to occur of (i) identification or use of such goods and property by Seller (as hereinabove provided) for use in the performance of its Purchase Order, (ii) commencement of processing, assembly, incorporation or use of such goods and property in the performance of this Purchase Order, or (iii) payment or reimbursement of the

18.4 cost thereof by BUYER, in whole or in part all without regard to the date(s) such Other Property is shipped or delivered to BUYER

18.5 Seller shall be deemed to be a bailee of the Furnished Property, the Purchased Property and the Other Property for the assembly or processing of same for BUYER's benefit and shall be responsible for the care, custody, and control thereof until delivery and final acceptance thereof by BUYER, regardless of earlier retention or passage of title to BUYER. Vesting of title to the Purchased Property and the Other Property as provided in this Paragraph 18.0 shall not impair any rights which BUYER might have under this Purchase Order or otherwise to reject or revoke acceptance of nonconforming goods or services. Notwithstanding the passage of title and BUYER's election to insure same against risk of loss, the Purchased Property and the Other Property (and, at BUYER's request, the Furnished Property) shall be insured by Seller at its expense in an amount equal to the replacement cost thereof, with loss payable to BUYER

18.6 The furnished Property, the Purchased Property and the Other Property shall be subject to removal and inspection by BUYER at any time without cost or expense to BUYER, and BUYER shall have free access to Seller's premises for the purpose of inspection or removing same.