

GENERAL CONDITIONS FOR PURCHASE ORDER

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1.0 DEFINITIONS

The following definitions apply to these General Conditions and in the other Purchase Order Documents, unless the context clearly requires otherwise:

- 1.1 "Applicable Laws" shall have the meaning set forth in Article 25.1.
- 1.2 "Buyer" means Washington Group International, Inc., an Ohio corporation, (or, if the Purchase Order Form is signed by one of its subsidiaries or affiliates, such subsidiary or affiliate), its successors and assigns.
- 1.3 "Damages" shall have the meaning set forth in Article 25.2.
- 1.4 "Day(s)" means calendar day(s) unless otherwise specified.
- 1.5 "Facility Site" means all those parcels of land on which the Project is to be located.
- 1.6 "Force Majeure Event" shall have the meaning set forth in Article 37.0.
- 1.7 "General Conditions" means the terms and conditions set forth in this document, consisting of Articles 1.0 through 48.0.
- 1.8 "Goods" means all material, equipment, supplies and other items to be furnished by Seller under the Purchase Order.
- 1.9 "Hazardous Material" means any hazardous material or waste, toxic substance, pollution or contamination.
- 1.10 "Indemnified Parties" shall have the meaning set forth in Article 25.2.
- 1.11 "Owner" means the ultimate Owner of the project identified as such in the Purchase Order and any of its subsuppliers affiliates or vendors of any tier.
- 1.12 "Party" or "Parties" means Buyer and/or Seller.
- 1.13 "Project" means the project or facility for which the Goods and/or Services are being purchased.
- 1.14 "Purchase Order" means the document entitled "Purchase Order" and issued by Buyer to Seller in connection with the Project, all Purchase Order Documents set forth therein, and all written change orders, modifications and supplements thereto, if any.
- 1.15 "Purchase Order Documents" means the documents identified as Purchase Order Documents in the Purchase Order.
- 1.16 "Purchase Order" shall mean the document entitled Purchase Order Form and executed by Buyer and Seller.
- 1.17 "Purchase Order Price" means the price to be paid by Buyer to Seller for the Goods and Services as provided for in the Purchase Order.
- 1.18 "Schedule" shall have the meaning set forth in Article 6.1.
- 1.19 "Seller" means the individual or entity identified as such in the "Purchase Order".
- 1.20 "Services" shall have the meaning set forth in Article 20.0.
- 1.21 "Special Conditions" means the terms and conditions identified as such in the "Purchase Order".
- 1.22 "Subsupplier" means vendor, supplier, materialman, consultant, contractor, subcontractor or other person or entity providing goods or services directly or indirectly to Seller in connection with the Purchase Order.

2.0 PURCHASE ORDER ADMINISTRATION

2.1 Buyer may establish and implement a program to monitor the performance and quality of the Goods and Services. Seller shall provide Buyer's inspectors and supervisory personnel access to all Goods and Services wherever in preparation or progress. Notwithstanding any monitoring program implemented by Buyer with respect to the Goods and Services, Buyer shall have no obligation to supervise or inspect Goods and Services, and any inspection by Buyer with respect to the Goods and Services shall not relieve Seller of its obligations under this Purchase Order.

2.2 Buyer may expedite Seller and Subsuppliers in the performance of the Goods and Services and Seller shall provide Buyer with all information reasonably requested by Buyer to enable it to do so. Any expediting efforts by Buyer will not

relieve or lessen Seller's responsibility for its failure to meet its obligations under the Purchase Order.

2.3 Seller shall be solely responsible for the Goods and Services and neither Owner nor Buyer shall be responsible for Seller's safety precautions and programs incident thereto, failure to comply with Applicable Law, or failure to furnish or perform the Goods or Services as required under the Purchase Order.

2.4 Neither Owner nor Buyer shall be responsible for the acts or omissions of Seller or any Subsupplier(s).

2.5 Buyer may disapprove or reject Goods or Services which, in its opinion, do not conform to the requirements of the Purchase Order.

2.6 Buyer may schedule and conduct job meetings to be attended by persons designated by Buyer, including Seller and its Subsupplier(s) for the Project, to discuss matters related to the Goods, Services or Project, including but not limited to procedures, progress, problems, scheduling, safety and coordination.

2.7 Buyer and/or the Owner may implement from time to time safety, health and drug free programs (and amendments thereto) of general applicability to the Facility Site. Buyer's personnel, Seller's personnel, and all Subsupplier personnel shall all fully comply with any such programs. Buyer will keep copies of any such programs at the Facility Site and they will be available during normal business hours for Seller to inspect and/or copy.

2.8 Buyer may establish procedures for processing shop drawings, samples and other submittals by Seller.

2.9 Buyer shall review and process all requests for change orders by Seller as set forth in Article 9.0.

2.10 Buyer shall determine when the Goods and Services are complete.

3.0 PURCHASE ORDER

3.1 The Purchase Order is intended to be read as a whole, and any Goods or Services required by one part and not mentioned in another shall be executed to the same extent and purpose as though required by all. The misplacement, addition, or omission of a word or character shall not change the intent of any part from that set forth by the Purchase Order as a whole. Should a question or doubt arise as to the intent and meaning of any part of the Purchase Order, Seller shall immediately notify Buyer in writing before the part of the Goods and Services affected is performed. Buyer's determination of intent and meaning of such part shall be final, subject to dispute resolution under Article 38.0.

3.2 In the various parts of the Purchase Order where reference is made to applicable codes and standards, the Goods and Services shall, except as otherwise specified, conform to the latest issue of the referenced code or standard available at the time the Goods or Services are delivered or performed. Upon any point of conflict between codes and standards applicable to the Goods or Services, Buyer shall be notified, but the code or standard imposing the more or most stringent requirement as the case may be shall govern, unless otherwise stipulated by Buyer in writing.

3.3 Where specific governing standards are not specified in connection with the Goods or Services, the highest applicable industry codes and standards shall govern.

3.4 Seller acknowledges and agrees that it shall provide all labor, services, equipment, materials, supplies, documentation and other such items necessary or appropriate to perform and

complete the Goods and Services in conformity with and as reasonably inferred from the Purchase Order, notwithstanding the fact that each such necessary or appropriate item may not be expressly specified therein.

4.0 SAFETY

4.1 Seller acknowledges that safety is of prime importance to Buyer and Owner, and Seller shall cooperate with Buyer and Owner in efforts to prevent injuries to personnel and to comply with all applicable safety rules and regulations.

5.0 SUBSUPPLIERS

5.1 Seller shall notify Buyer in writing of the names of Subsuppliers proposed for any of the Goods or Services and shall not subcontract any part of the Goods or Services without the prior written authorization of Buyer. Seller shall not subcontract the Goods or Services as a whole. Seller shall bind all Subsuppliers to the provisions of the Purchase Order applicable to the subcontracted Goods and Services.

5.2 Neither the Purchase Order nor any purchase order with a Subsupplier shall create any contractual relationship between any Subsupplier and either Owner or Buyer, nor any payment or other obligation on the part of either Owner or Buyer to any Subsupplier.

5.3 Notwithstanding the existence of any purchase order with a Subsupplier, Seller shall be fully responsible to Buyer for the Goods and Services as if no such purchase order exists.

5.4 Seller's purchase orders and similar purchase forms with any Subsuppliers in connection with any subcontracted Goods or Services under any of the Purchase Order Documents shall comply with the applicable requirements of all Purchase Order Documents.

5.5 Seller shall ensure that all Subsuppliers establish and implement a quality control system in their work and manufacturing processes which assures that all subcontracted Goods and Services shall meet the standard of performance required under the Purchase Order Documents.

5.6 All purchase orders and similar purchase forms with Subsuppliers shall contain a provision making them assignable to Buyer, Owner, or their respective successors and assigns, upon Buyer's written request following termination of this Purchase Order or Owner's written request following termination of the Prime Contract, as applicable.

6.0 SCHEDULE

6.1 Within ten (10) days after Purchase Order award, Seller shall prepare and submit for Buyer's approval a detailed schedule for furnishing the Goods and Services as required by the Purchase Order (such approved schedule, the "Schedule"). The Schedule must conform to all schedule parameters provided in the Purchase Order, including without limitation the Buyer's schedule. Seller shall, subject to Buyer's approval, maintain and update the Schedule throughout the performance of the Purchase Order. Unless directed otherwise by Buyer, Seller shall furnish the Goods and Services strictly in accordance with the Schedule (as updated), and shall, without additional cost to Buyer, work such overtime or take such other or different measures as may be required in order to meet the Schedule.

6.2 Seller represents that it shall (i) prepare documents for its planning, scheduling and coordination of the performance of the Purchase Order that are feasible and realistic, and (ii) prepare schedules, updates, revisions and reports that accurately reflect

Seller's reasonable expectations as to the sequence of activities, duration of activities, productivity or efficiency, projected and actual completion of any Goods or Services or activity, and delays or problems expected or encountered and specified float time.

6.3 Seller acknowledges that the dates required in the Schedule for the performance and completion of the Goods and Services are essential conditions of the Purchase Order and agrees that Seller's failure to perform and complete the Goods and Services consistent with such dates shall constitute a material violation of the Purchase Order for the purposes of Article 16.0 and for the purposes of any other remedy available to the Buyer under the Purchase Order, at law, and/or in equity.

7.0 PROJECT INVESTIGATION

7.1 Seller represents that it has, or has had full opportunity to, examine the Facility Site and the Purchase Order; that it has satisfied itself as to the requirements of the Purchase Order and all conditions which may affect its performance under the Purchase Order, including but not limited to, as applicable, labor conditions and availability, the condition of the Facility Site and access thereto to furnish the Goods and Services and local weather conditions; that the Purchase Order Price and Schedule have been determined with due regard for all such requirements and conditions which do or may affect the Purchase Order; and that its entry into the Purchase Order has not been induced either wholly or in part by any promises, representations or statements by or on behalf of the Buyer, its agents or representatives, or the Owner, its agents or representatives, other than those set forth in the Purchase Order. Seller acknowledges and accepts the risk of mistake or error with respect to all matters within the scope of its Project investigation, and agrees that it shall not be entitled to, and shall make no claim for, any additional compensation or damages of any kind or character or extension of time should any requirements or conditions applicable to the Purchase Order be different from or in addition to those identified by Seller through such investigation.

8.0 SELLER'S DRAWINGS, SPECIFICATIONS, AND CALCULATIONS

8.1 Drawings, specifications, and calculations submitted by Seller to the Buyer with a request for review, may be reviewed and commented upon by the Buyer. Such review and comment shall relate only to general conformance with the specifications and for confirmation of physical interface of items shown with related systems. In no event will such review and comment relieve Seller of the responsibility of compliance with all requirements of the Purchase Order.

8.2 Seller shall furnish all submittals and other documentation when and as required by the Purchase Order. All materials specifically prepared or developed by Seller or any of its Subsuppliers to perform Seller's obligations under the Purchase Order shall become the property of Buyer upon payment for, or termination of, Seller's Goods and Services, whether delivered to Buyer or not, and shall be delivered to Buyer on written request.

9.0 CHANGES

9.1 Buyer has the right by written order to Seller to add to, deduct from or otherwise change the Purchase Order. If any such Buyer directed change affects the Purchase Order Price, Schedule or any other provision of the Purchase Order, or Seller becomes aware of any circumstance which Seller believes necessitates a change in the Purchase Order Price, Schedule or

any other provision of the Purchase Order, Seller shall, within seven (7) days of receipt of such written order or becoming aware of such circumstance, submit a written request to Buyer for an adjustment to the Purchase Order Price, Schedule or other provision of the Purchase Order Seller believes is affected thereby. Seller's written request shall include documentation sufficient to enable Buyer to determine the factors necessitating the adjustment(s) being requested. If Seller fails to provide such written request to Buyer within such seven (7) day period (or fails within such period to provide Buyer with a detailed statement of the reasons it is unable to do so and, as soon as it is able to do so, provides such request), Seller shall be deemed to have waived any right for submitting a claim and/or any claim for an adjustment of the applicable Purchase Order Price, Schedule or other provision of the Purchase Order.

9.2 Following receipt of timely written documentation from Seller as prescribed in Article 9.1, Buyer shall, provided an adjustment is warranted, issue a written change order to Seller either (i) adjusting the Purchase Order Price, Schedule or other provision of the Purchase Order as requested by Seller or (ii) in the event Buyer disagrees with Seller's statement as to the effect of a Buyer directed or other change to the Goods and Services, adjusting the Purchase Order Price, Schedule or other provision of the Purchase Order if and as it deems appropriate. Seller shall thereafter furnish the Goods and Services in accordance with a written change order, subject to dispute resolution under Article 38.0. Seller shall have no right to suspend or delay the furnishing of Goods or Services while Buyer is reviewing Seller's change request or if it disagrees with the written change order issued to it by Buyer

9.3 Notwithstanding anything to the contrary in this Article 9.0; no adjustment in the Purchase Order Price, Schedule or any other provision of the Purchase Order shall be made for or as a result of any correction of errors, omissions, deficiencies, or improper or defective Goods or Services on the part of Seller or its Subsuppliers.

9.4 Any changes shall be performed by Seller consistent with all of the requirements of the Purchase Order, unless otherwise directed in writing by Buyer.

10.0 INVOICING, PAYMENT AND AUDIT

10.1 Invoices will be paid as set forth in the Purchase Order Form if they meet the invoicing requirements set forth in the Purchase Order and this Section 10.0, show applicable discounts, and are accompanied by the bills of lading or transportation receipts. Applicable freight charges and sales and use taxes shall be shown separately on the invoices. Freight charges shall be supported by copy of the paid freight bill.

10.2 Time in conjunction with payment and any applicable payment discounts will be computed from the date the Buyer receives Seller's proper invoice, unless Seller's entitlement to payment is conditioned on delivery of Goods and Services, in which event time for payment and any applicable payment discounts will be computed from the later of (i) the date the Buyer receives Seller's proper invoice and (ii) the date Goods are received and accepted.

10.3 Any invoice deviating from the requirements of the Purchase Order will be returned to Seller for correction and/or submission of acceptable support documentation.

10.4 The terms of payment as shown in the Purchase Order shall take precedence over terms of payment shown on Seller's invoices or elsewhere.

10.5 No payment shall constitute a waiver of any claims Buyer may have against Seller.

10.6 All payments are provisional and any overpayment by Buyer to Seller shall be deemed to be a mistake of fact and promptly repaid to Buyer upon demand.

10.7 The date of receipt by Buyer of a proper, complete and fully substantiated invoice from Seller will establish the effective date of the invoice. If not otherwise specified in the Purchase Order, payment shall be net forty five (45) days after the effective date of the invoice. The acceptance of any payment shall constitute a waiver of all claims by Seller.

10.8 Applicable freight charges and sales and use taxes shall be shown separately on the invoices. Freight charges shall be supported by copy of the paid freight bill.

10.9 Notwithstanding anything to the contrary in this Purchase Order, Buyer shall pay Seller the undisputed portion of any invoice only after Buyer receives corresponding payment from Owner.

10.10 If required by Buyer, Seller shall furnish with each invoice a waiver and release in form and substance satisfactory to Buyer in which Seller waives and releases any and all claims of any nature, including but not limited to mechanic's and other liens or claim or right of lien or other encumbrance, which Seller or its Subsuppliers have or may have against Buyer, Owner the Facility Site and/or Project as a result of labor, services, equipment, material, supplies, documentation or other items used or employed by Seller or its Subsuppliers to the date of the invoice in the performance of the Purchase Order.

10.11 Acceptance by the Seller of the final payment on the Purchase Order Price shall be and shall operate as a release by Seller of Buyer from all claims of the Seller arising out of or in connection with the Purchase Order. Seller further agrees that as a condition to Buyer's obligation to make final payment, Seller shall, if required by Buyer, procure and furnish to Buyer in a form acceptable to Buyer a full and complete waiver and release of any and all claims of any nature, including but not limited to mechanic's and other liens, or claim or right of lien or other encumbrance, from one or more Subsuppliers.

10.12 Seller shall maintain true and correct records of all reimbursable costs (in accordance with generally accepted accounting principles applied on a consistent basis) pertaining to Seller's performance under this Purchase Order and all transactions related thereto, and shall retain all such records for a period of four (4) years from the date of their preparation, or such longer period as may be required by law. Buyer may from time to time make an audit of all records of Seller in connection with its performance under the Purchase Order. Buyer shall be permitted to make such audits for a period of four (4) years from the date of the preparation of the applicable records, or such longer period as may be required by law. As to all work which Seller may perform on a reimbursable basis, Buyer will have the right at reasonable times and places, to inspect, and copy any of Seller's books, accounts, time cards, records of transactions, estimates, schedules, correspondence or any other records or documents which may have possible bearing on its performance under such Purchase Order. Seller shall assist Buyer in making the above audits. In the event an audit by Buyer results in disallowance of costs, any overpayment that has been made to Seller will be immediately reimbursed by Seller to Buyer.

11.0 PAYMENTS WITHHELD

11.1 Buyer may withhold the whole or any part of any payment to Seller to such extent as may be necessary to protect Buyer from loss as a result of:

- (a) incomplete, defective or damaged Goods or Services not remedied;
- (b) backcharges, per Article 44.0;
- (c) claims filed or reasonable evidence indicating probable filing of claims, including lien claims, involving or arising out of Seller's performance under the Purchase Order;
- (d) damage to Buyer's, Owner's or their respective other contractors work;
- (e) failure of the Seller to make payments when due to Subsuppliers;
- (f) reasonable insecurity regarding Seller's intention or ability to continue with the proper and timely performance under the Purchase Order;
- (g) failure of the Seller to perform or comply with any of its obligations under the Purchase Order; or
- (h) expenses arising from frivolous claims against Buyer.

11.2 Funds withheld in accordance with this Purchase Order are not for the benefit of the bonding company or any other third party.

12.0 SHIPMENTS OF GOODS

12.1 Seller shall deliver the Goods in good condition properly packaged for shipment and otherwise in accordance with the Purchase Order.

12.2 Seller must strictly comply with any requirement specified in the Purchase Order.

12.3 All charges for packing, boxing, crating, freight, trucking, or special services of any kind are included in the Purchase Order Price unless otherwise specifically authorized in the Purchase Order.

12.4 All shipping documents must reference Buyer's Purchase Order number.

12.5 No delivery of any Goods shall be considered made or complete until such Goods are completely and finally delivered to Buyer's physical possession in their entirety, including but not limited to replacement of any defective parts. No shipment is deemed completed until Seller has delivered the bill of lading or transportation receipt to the Buyer.

13.0 SELLER INSURANCE

13.1 Unless otherwise specified in the Purchase Order, Seller agrees that it shall obtain and maintain during the performance of any Services at the Facility Site and until the acceptance thereof, the insurance described in 13.2 and shall be carried with insurance companies with at least a Best's "A" rating. Seller will furnish to Buyer three (3) copies of the certificate(s) evidencing such insurance prior to commencing, performance or physically present on the Facility site under the Purchase Order.

13.2 The required insurance coverage is as follows:

(a) Worker's Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits of the Worker's Compensation laws of any applicable jurisdiction in which the Services are to be performed hereunder, and Employers' Liability Insurance with limits of five hundred thousand dollars (\$500,000) for trauma, each accident; five hundred thousand dollars (\$500,000) for disease, each person and five hundred thousand dollars (\$500,000) disease, policy limit.

(b) Commercial General Liability Insurance written on the latest ISO occurrence form and including coverage for Contractual Liability and Products and Completed Operations (to remain in force for two (2) years following acceptance of the Goods and Services). The insurance required by this clause (b) shall have the following limits of liability:

Third Party Bodily Injury and Property Damage Liability:

\$1,000,000 combined single limit per occurrence and \$2,000,000 combined single limit general aggregate, with such limits available to the Project.

(c) Business Automobile Liability insurance covering all owned, leased and non-owned vehicles used in connection with the Goods and Services, with not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

(d) If professional services are involved, Professional Liability Insurance with not less than \$1,000,000 per occurrence with a 24 months discovery period after completion of the performance under the Purchase Order.

13.3 The following endorsements shall be included in the above insurance coverages:

- (a) Thirty (30) days advance written notice in the event of cancellation, non-renewal or material change of any policy. Language referring to "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be stricken from the certificate of insurance.
- (b) Buyer and Owner named as additional insureds (except on Workers' Compensation and Professional Liability Insurance).
- (c) A waiver of subrogation in favor of Buyer and Owner.
- (d) Severability of Interest or Separation of Insureds.
- (e) Seller's insurance is primary and any insurance maintained by Buyer is considered excess and non-contributory.

14.0 RISK OF LOSS; DEDUCTIBLES; TITLE

14.1 Notwithstanding any other provision in the Purchase Order, at all times prior to Buyer's transfer to the Owner of risk of loss of the Project and to the extent not covered by Builder's Risk insurance applicable to the Project, Seller shall bear the risk of loss and full responsibility for the costs of replacement or repair resulting from any damage to, or loss or destruction of, the Project or any portion thereof arising from any nonconformity or defect in the Goods or Services.

14.2 In addition to its obligations under Article 14.1, Seller shall be responsible for deductibles for any damage or loss covered by insurance provided by Seller under Article 13.0, and for the payment of deductibles for any damage or loss covered by any Builder's Risk insurance and covering the Goods and/or Services, provided that with respect to such Builder's Risk

insurance deductible, such damage or loss was caused by (i) the fault, negligence or willful misconduct of Seller or any of its Subsuppliers, (ii) the failure of Seller to meet its obligations under the Purchase Order, (iii) any nonconformity or defect in the Goods or Services.

14.3 Title to the Goods, or portions thereof, shall pass to Buyer upon the occurrence of the earliest of the following events, as applicable: (i) when such Goods or portion thereof are delivered to the Buyer or Facility Site pursuant to the Purchase Order; (ii) when Seller has been paid any sum to which it may become entitled in respect to such Goods or portion thereof; or (iii) when such Goods or portion thereof are identifiable to the Purchase Order. All Goods or portions thereof and other items to which Buyer has title shall not be removed from the Facility Site without Buyer's prior written consent. Use of storage facilities furnished to Seller at the Facility Site shall not relieve Seller of such risk of loss unless otherwise agreed in writing.

15.0 EXPEDITING

15.1 Seller agrees 1) to expedite delivery of the Purchase Order and any suborders to the extent necessary and in sufficient time to safeguard the Schedule; 2) that all Goods and Services furnished hereunder by Seller or its Subsuppliers shall be subject to expediting by the Buyer and/or Owner at all reasonable times and places, both before, during and after manufacture; 3) that such expediting or failure to expedite by the Buyer and/or Owner shall not relieve Seller of any of its responsibilities under the Purchase Order; and 4) that all orders with Subsuppliers shall include a statement providing for the expediting rights of the Buyer and/or Owner.

16.0 TERMINATION FOR CAUSE

16.1 If the Seller should file a bankruptcy petition or be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for the Seller, or if it should fail to supply enough properly skilled workmen or proper plant or materials or fail to make sufficient progress so as to endanger the timely and proper performance of the Purchase Order, or if it should abandon the Purchase Order or unreasonably delay its progress or completion, or persistently disregard Applicable Law or the instructions of Buyer or materially breach any provision of the Purchase Order, then Buyer may, without prejudice to any other right or remedy, upon written notice to Seller, terminate the employment of the Seller with respect to all or part of the Goods or Services and take possession of such Goods or Services, and all materials for such Goods or Services and tools, plant, appliances and equipment and temporary construction used in connection therewith and finish such Goods or Services by whatever method Buyer may deem expedient, all at the expense of Seller. In such case Seller shall not be entitled to receive any further payment from Buyer.

16.2 If Buyer's expense of completing the Goods and Services, including any attorney's fees and other legal expenses plus 15% administration fee in connection therewith, exceed the amount, if any, which Buyer agrees would have been payable to Seller had it completed the Goods and Services as required under the Purchase Order, Seller shall pay the difference to Buyer within ten (10) days after receipt from Buyer of written notice of the amount thereof.

16.3 Upon the failure of Seller to pay Buyer as set forth in Article 16.2, Buyer shall have the right to sell the whole or any part of any of Seller's materials, tools, plant, appliances, equipment and temporary structures at public or private sale at any time or times thereafter without further notice to Seller and to

transfer and deliver the same. Buyer shall have the right to become the purchaser at such sale or sales (free and discharged of any equity of redemption) and after deducting all legal and other costs, attorney fees and expense of sale and delivery, shall apply the balance, if any, of the proceeds of such sale or sales so made, to the amount due Buyer. Buyer shall pay the surplus, if any, to Seller and Seller shall pay any deficiency to Buyer on demand.

17.0 TERMINATION FOR CONVENIENCE OF BUYER

17.1 Buyer may upon written notice to Seller, without cause and without prejudice to any other right or remedy, elect to terminate all or any part of the Goods or Services. Such termination shall be effective in the manner specified in said notice. On receipt of such notice Seller shall, unless the notice directs otherwise, immediately discontinue performance under this Purchase Order and the placing of orders for equipment, materials, supplies and other items in connection with the terminated performance under this Purchase Order, and shall, if requested, make every reasonable effort to procure cancellation of existing orders and subcontracts upon terms satisfactory to Buyer, and shall thereafter do only such performance under this Purchase Order as may be necessary to preserve and protect performance under this Purchase Order already in progress and continue to complete the performance under this Purchase Order not terminated hereunder, and to protect all material, plant or equipment on the Facility Site or in transit thereto.

17.2 Should Buyer elect to terminate all or any part of this Purchase Order for convenience as provided herein, a complete and final settlement of any and all claims of Seller arising as a result of such termination shall be made as follows: Buyer shall pay to Seller, forty five (45) days after receipt of an invoice which meets the requirements of the Purchase Order, all amounts due and owing to Seller on or prior to the date of termination, including a payment for performance under this Purchase Order satisfactorily completed but not yet invoiced by Seller prior to the termination date, all retainage held by Buyer at the date of termination, and all reasonable, actual termination costs incurred by Seller in terminating performance under this Purchase (but excluding any and all costs and expenses incurred by Seller from and after the date of termination for those of its employees who are not directly performing required termination activities). In no event shall Seller be entitled to lost profit on Goods or Services not furnished.

17.3 As a condition precedent to receiving any termination payment under this Article 17.0, Seller shall execute and deliver all such papers and take such steps concerning obligations and commitments of and to Seller in connection with the Goods and Services as Buyer may require for the purpose of fully vesting in Buyer the rights and benefits of Seller under such obligations and commitments, including but not limited to valid and final waiver of any and all actual or potential liens and/or claims.

18.0 SUSPENSION

18.1 Buyer may upon written notice to Seller at any time suspend the performance of all or any portion of this Purchase Order. Upon receipt of such notice, Seller shall, unless the notice requires otherwise:

(a) immediately discontinue the performance under the suspended Purchase Order on the date and to the extent specified in the notice;

(b) place no further suborders or contracts for equipment, material, supplies, services or facilities with respect to the performance under the suspended Purchase Order, except to the extent required in the notice;

(c) promptly make every reasonable effort to obtain suspension upon terms satisfactory to Buyer of all suborders and other agreements to the extent they relate to suspended performance under this Purchase Order;

(d) continue protection and maintenance of Goods, including those portions of Goods which have been suspended; and

(e) take any other reasonable steps to minimize Seller's costs associated with such suspension.

18.2 As full compensation for Buyer's suspension of performance under this Purchase Order, Buyer will pay to Seller forty five (45) days after receipt of an invoice which meets the requirements of the Purchase Order, the actual, reasonable costs associated with mobilization and demobilization of Seller's plant, forces and equipment, the cost of maintaining and protecting the Goods and Services furnished prior to the date of the invoice, and those amounts Buyer and Seller agree Seller should be paid for equipment, materials, supplies, documentation or other items which Seller procured for the Project but for which Seller has not been paid as of the date of the suspension. Seller shall during the period of the suspension continue to invoice Buyer in accordance with Article 10.0 for the costs of maintaining and protecting the Goods and Services furnished prior to suspension.

18.3 Upon receipt of notice to resume suspended performance under this Purchase Order, Seller shall immediately resume performance thereof to the extent required in the notice.

18.4 No adjustment shall be made for any suspension to the extent that performance under this Purchase Order would have been concurrently suspended, delayed, or interrupted by Seller's non-compliance with the requirements of this Purchase Order.

19.0 EMERGENCIES

19.1 In the event of an emergency at the Facility Site threatening loss or injury to life or property which Seller may be able to prevent or mitigate, Seller, without awaiting special instruction or authorization from Buyer, shall act as necessary to attempt to prevent or mitigate such threatened loss or injury.

20.0 RELATED SERVICES

20.1 Whenever Seller furnishes personnel for installation, start-up, testing, inspection, related services, or maintenance (the "Services"), the following provisions shall apply, in addition to other applicable provisions of the Purchase Order:

(a) Seller represents that Seller, its agents, and employees, are qualified and competent to perform the Services and that all tools and equipment furnished by Seller in its performance of the Services are, and shall be kept, in good working order;

(b) Seller warrants that the Services shall be performed in a good and workmanlike manner and in accordance with accepted standards and shall conform to the requirements of the Purchase Order. Any Services not so performed or not in conformity herewith shall be promptly re-performed and resulting damage, if any, corrected, all as required hereunder by Seller, at no cost to Buyer. In the event Seller fails to re-perform any Services and/or correct any resulting damage as required, Buyer may do so and Seller shall reimburse Buyer for all costs and expenses incurred;

(c) Seller's personnel will, upon arrival at the Facility Site, report to Buyer's site manager who will provide an appropriate orientation to such personnel including proper lines of communication with discipline superintendents. All formal

communications shall pass between the Buyer and Seller's personnel. This does not preclude routine communications among such personnel and discipline superintendents and other appropriate personnel;

(d) Seller's personnel shall comply with all Facility Site and Project rules and regulations, including but not limited to those pertaining to safety, plant protection, security, identification, drug testing, and the operation and parking of vehicles;

(e) When Seller deems the Services completed, Seller shall give the Buyer notice thereof in writing. Within fifteen (15) days after receipt of such notice, Buyer will determine if the Services have been performed and completed as required. If the Services have been properly completed, Buyer will advise Seller in writing that same have been accepted. If the Services have not been completed as required, Buyer will so notify Seller and Seller will take remedial action as described in Article 20.1(b) and will repeat the procedure stated herein until the Services have been accepted;

(f) At any time prior to final completion and acceptance of all the Services, Buyer may accept as finally complete any finished part of the Services that Buyer and Seller reasonably agree constitutes a separately functioning and usable part of the Services that can be used by the Buyer without significant interference with Seller's performance of the remainder of the Services. The Buyer may at any time request in writing that Seller permit Buyer to accept any such part of the Services and Seller shall make that part of the Services available for Buyer's inspection within five (5) days following the request. If Buyer and Seller agree following the inspection that the part of the Services in question can be accepted by Buyer as finally complete, Buyer shall issue a written notice to Seller accepting such part of the Services;

(g) Seller shall at all times during the performance of Services at the Facility Site abide by and be a signatory to any project labor agreement(s) applicable to the Project and Seller shall provide evidence that it is a signatory to such agreement(s) prior to performing any Services at the Facility Site; and

(h) Seller shall not interfere with the work of any other entity(ies) on the Facility Site, without prior specific written authorization from Buyer, but Seller shall immediately notify Buyer if Seller foresees risk of such interference. Any labor provided by Seller at the Facility Site shall be compatible with all other labor at the Facility Site. Seller will use all reasonable means to ensure labor harmony and continued progress of work at the Facility Site.

(i) Seller agrees that the Owner or Buyer shall have the right to perform or have performed in or about the Facility Site during the time when Seller is furnishing the Goods or Services such other work as Owner or Buyer may desire and that Seller shall make every reasonable effort to enable both its performance under the Purchase Order and such other work to be completed without hindrance or interference.

(j) In the event Seller's performance is delayed or interfered with by the work of Buyer, Owner or their respective other contractors, Seller's sole and exclusive remedy shall be an extension of time for its performance. Any claim by Seller for an extension of time arising out of any alleged delay or interference shall be made to Buyer in accordance with Article 9.0.

21.0 GOODS WARRANTIES

21.1 Seller warrants that all Goods furnished hereunder and any component part thereof shall be new and unused and free from defects in design, material and workmanship, shall strictly conform to the specifications and/or drawings, shall be of the highest quality of their respective kinds, and shall be of sufficient size and capacity and materials to fulfill in all respects the operating conditions specified.

21.2 Upon receipt of written notice from Buyer that the Goods do not conform with Buyers Warranty under Article 21.1, Seller shall at no cost to Buyer promptly repair or replace such Goods so that they conform with the requirements of the Purchase Order, including but not limited to accessing such Goods. If the Goods cannot be repaired or replaced so as to conform with the requirements of the Purchase Order, the nonconforming Goods shall be removed at no cost to Buyer and Seller shall promptly refund all or that portion of the Purchase Order Price that has been paid by Buyer, along with any carriage, insurance, freight and related costs incurred by Buyer in connection with the transportation, handling, delivery, removal, and replacement of the Goods and in connection with any damages or other expenses incurred in removing and/or replacing such Goods.

21.3 If Seller does not commence action to correct a nonconformity in the Goods within a reasonable time (in no event later than two (2) working days) following receipt of written notice of the nonconformity, Buyer may effect repairs, and Seller shall reimburse Buyer for all expenses incurred. Such actions on the part of Buyer shall not relieve Seller of any responsibility or liability hereunder with respect to such Goods.

21.4 Seller warrants that it has the ability to deliver good title to all Goods, that it has the right to sell the Goods, and that the Goods are free from any security interest, lien, restriction or other encumbrance.

22.0 LIENS

22.1 Seller shall promptly pay for all labor, services, equipment, materials, supplies, documentation or other items used or employed by it or on its behalf in the performance of the Purchase Order and shall keep and maintain all equipment, materials, supplies, and other items and the Facility Site and Project free from all mechanic's and other liens or claim or right of lien or other encumbrance. If any mechanic's or other lien or claim or right of lien or other encumbrance is filed upon or asserted against the Facility Site and/or Project by a Subsupplier, Seller shall promptly furnish to Buyer (or appropriate governmental authority) a bond or other collateral necessary to discharge such lien or claim or right of lien or other encumbrance, and shall indemnify, defend and hold harmless the Indemnified Parties against and from any and all Damages arising from or in connection with any such lien or claim or right of lien or other encumbrance, as applicable, subject to Applicable Law.

23.0 INTELLECTUAL PROPERTY PROTECTION

23.1 Seller shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all Damages which the Indemnified Parties may suffer or pay by reason of any claims or suits arising out of claims of infringement of any patent rights, copyrights or other intellectual property, proprietary or confidentiality rights relating to the Goods or Services performed by Seller or any Subsupplier under or in connection with the Purchase Order, subject to Applicable Law. Any such suit or claim shall be defended at Seller's expense by counsel satisfactory to Buyer. If, in any such suit or claim, a temporary

restraining order or preliminary injunction is granted, Seller shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such suit or claim, the Goods or Services, or any part, combination or process thereof, is held to constitute an infringement and its use is permanently enjoined, Seller shall promptly make every reasonable effort to secure for Owner or Buyer, at no cost to Owner or Buyer, a license authorizing continued use of the infringing item. If Seller is unable to secure such suspension or such license within a reasonable time, Seller shall, at its own expense and without impairing Owner's or Buyer's use of the Goods or Services, either replace the affected Goods or Services, or part, combination or process thereof, with non-infringing components or parts or modify the same so that same becomes non-infringing.

24.0 CONFIDENTIALITY

24.1 All drawings, specifications, technical data, and other information furnished to Seller by Buyer, or Owner, or their respective other contractors are, and shall remain, the property of Owner, Buyer or such other contractors, as the case may be, and may not be copied or otherwise reproduced or used in any way except in connection with the Goods or Services, or disclosed to third parties or used in any manner detrimental to the interests of Owner, Buyer or such other contractors.

24.2 The following information shall not be subject to the confidentiality requirements of Article 24.1:

(a) information in the public domain through no action of Seller in breach of this Purchase Order; or

(b) information independently developed by Seller; or

(c) information acquired by Seller from a third party not delivered to Seller in breach of confidentiality agreements which said third party may have with Buyer, Owner, Owner's other contractors, or any other third party.

24.3 If and when requested in writing, Seller shall, and shall cause its Subsuppliers to, execute any such confidentiality agreements as are deemed necessary for the protection of Buyer, Owner and/or any of their respective other contractors.

25.0 APPLICABLE LAW

25.1 Seller, all Subsuppliers, all Goods and Services provided hereunder shall comply with all laws, treaties, ordinances, judgments, decrees, injunctions, writs and orders of any court or governmental agency or authority, and rules, regulations, codes, orders, interpretations of any federal, state, county, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, court or other body having jurisdiction over the Project or any activity conducted at or in connection with the Project ("Applicable Law").

25.2 Seller shall indemnify, defend, and hold harmless Owner, Buyer, and their respective directors, officers, employees, parents and subsidiaries of any tier, representatives, agents, successors and assigns, and any and all representatives, agents, directors, officers, employees of any of the foregoing, (the "Indemnified Parties"), against and from any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, interest and causes of action, including without limitation administrative and legal costs, reasonable attorney's fees (collectively, "Damages"), arising from or based on any actual or asserted violation of Applicable Law by Seller or any of its Subsuppliers, subject to Applicable Law.

25.3 Seller shall not under any circumstance apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution, laws or regulations relating to the Purchase Order or the performance thereof, without Buyer's prior written approval.

26.0 PERMITS AND LICENSES

26.1 Unless obtained by Owner or Buyer, Seller shall obtain and pay for any permits, licenses, or royalties which may be required for the shipping, transportation, delivery, furnishing and unrestricted, perpetual, royalty-free use of the Goods, and shall furnish evidence thereof to Buyer. Furthermore, whenever reports to municipal authorities are required from Owner or Buyer under penalty to report, or to report within a specific time, Seller shall be held liable for any costs or penalties to which Owner or Buyer may be subjected as a result of Seller's failure to give proper evidence of a license or permit within any time limit specified.

27.0 TAXES/DUTIES

27.1 Seller agrees to pay, and that the Purchase Order Price is inclusive of, all taxes, fees and contributions on or measured by the income, gross receipts or assets of Seller or any of its Subsuppliers and all taxes, fees and contributions on or measured by employees or other labor costs of Seller or any of its Subsuppliers, including without limitation all payroll or employment compensation tax, social security tax or similar taxes for Seller's or any of its Subsupplier's employees and agrees that Seller shall pay all such amounts. Seller further agrees to pay and that the Purchase Order Price is inclusive of all sales and use taxes, and all import, export and other customs duties, charges, levies and fees imposed or incurred in connection with the shipping and delivery of any equipment, materials, supplies or other items required for the Purchase Order to the Facility Site. In the event that Buyer should pay or be required to pay any of the foregoing items or any portion thereof, Seller shall reimburse Buyer therefore in full within five (5) days of receipt of written demand from Buyer for any such reimbursement.

28.0 GENERAL INDEMNITY

28.1 Seller shall indemnify, defend and hold harmless the Indemnified Parties against and from any and all Damages (including without limitation any damage to or destruction of property of, or death of or bodily injury to, persons (regardless of whether they are employees of an Indemnified Party, Seller or any Subsupplier, or unaffiliated with the Project, or otherwise)) caused or contributed to by (i) any fault or act or omission of Seller or any of its Subsuppliers, or of any of their respective employees, agents, or representatives, under, in connection with or otherwise relating to this Purchase Order or the Project or (ii) by any failure of Seller to comply with the terms of this Purchase Order; subject to Applicable Law.

28.2 In any and all claims against one or more of the Indemnified Parties by any employee of Seller or of any of its Subsuppliers, the indemnification, defense and hold harmless obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Seller or of any of its Subsuppliers, under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

29.0 ASSIGNMENT

29.1 Seller agrees that it shall have no right, power or authority to assign or delegate any of its rights or obligations under the Purchase Order, either voluntarily or involuntarily, or by operation of law, without prior written consent of Buyer and that any such unauthorized assignment or delegation shall be null and void and of no effect.

30.0 NO WAIVER OF BREACH

30.1 Any failure by Buyer at any time, or from time to time, to enforce or require the strict compliance with and performance by Seller of any of the terms or conditions of the Purchase Order shall not constitute a waiver by Buyer or a breach of any such terms or conditions or any other breaches, or the right of the Buyer to avail itself of the remedies it may have for any such breach.

31.0 PUBLICITY

31.1 Seller shall not disclose the nature of its work on the Project, or engage in any other publicity or public media disclosures with respect to the Project without the prior written consent of the Buyer.

32.0 SEVERABILITY/SURVIVAL

32.1 The provisions of the Purchase Order are severable, and, if any provision shall be determined to be illegal or unenforceable, such determination shall in no manner affect any other provision of the Purchase Order, and the remainder of the Purchase Order shall remain in full force and effect. In the event that any provision of the Purchase Order is held to be unenforceable or invalid by any court of competent jurisdiction, Buyer and Seller shall in good faith negotiate an equitable adjustment in the provisions of the Purchase Order to preserve its purpose and maintain the allocation of risk, liabilities and obligations originally agreed upon, to the maximum extent then possible under Applicable Law.

32.2 Notwithstanding anything to the contrary in the Purchase Order, the provisions of the Purchase Order setting forth (i) Seller's obligations with respect to confidentiality, indemnification, and warranty; (ii) limitations on Buyer's liability; and (iii) any obligation which expressly or by implication survives termination of the Purchase Order, shall survive completion of the Goods and Services or the earlier termination under Article 16.0 or Article 17.0.

33.0 SUCCESSORS AND ASSIGNS

33.1 The Purchase Order shall be binding upon and inure to the benefit of the Parties' respective heirs, successors, executors, administrators and authorized assigns.

34.0 HAZARDOUS MATERIALS AND MATERIAL SAFETY DATA

34.1 Seller shall notify Buyer immediately upon the discovery of the presence of any Hazardous Material on, or the release of Hazardous Material on or from, the Facility Site, and shall proceed in accordance with Article 34.2 hereof in connection therewith.

34.2 In the event a Hazardous Material is discovered to exist at the Facility Site and is one for which Seller is responsible pursuant to Article 34.3 hereof, Seller shall notify Buyer of the presence thereof and be responsible for responding to and handling such Hazardous Material (including but not limited to

the condition resulting from the presence thereof) in compliance with the requirements of all Applicable Laws and as directed by Buyer. In the event a Hazardous Material is discovered to exist at the Facility Site and is not one for which Seller is responsible pursuant to Article 34.3 hereof, Seller shall immediately notify Buyer of the presence thereof and thereafter proceed with the performance of the Purchase Order as directed by Buyer or otherwise

34.3 Seller is responsible for any Hazardous Material that Seller or any of its Subsuppliers creates, brings to or disturbs or releases upon or near the Facility Site.

34.4 Seller shall indemnify, defend and hold harmless the Indemnified Parties against and from all Damages caused or contributed to by any Hazardous Material for which Seller is responsible pursuant to Article 34.3 hereof, subject to Applicable Law.

34.5 Seller agrees to comply with Federal OSHA Hazard Communication Standards 29 CFR 1926.59 and 29 CFR 1910.1200 which requires that manufacturers, importers and distributors properly label all containers of hazardous materials or components and furnish a Material Safety Data Sheet (MSDS) for each hazardous material supplied.

34.6 Revised MSDSs must be submitted to consignee when there is a change in composition or when significant new information concerning Hazardous Materials or ways to protect against hazards become known.

35.0 BUYER INFORMATION

35.1 No information, including but not limited to, estimated quantities, bills of materials, lists, weights or quantities of materials or structures which have been or may be furnished to Seller under the Purchase Order are warranted or guaranteed as to accuracy, completeness or otherwise. They may or may not be accurate in any or all particulars, and they shall not be considered as finally correct, sufficiently complete or accurately covering any portion or all of the Goods or Services to be furnished under the Purchase Order.

35.2 Although the Goods or Services furnished under unit price items, if any, may differ from estimated quantities, the basis of payment for such Goods or Services shall be the actual amount of Goods or Services completed in each case, unless otherwise agreed in writing. Seller agrees that it will make no claim for loss of anticipated profits or for any other damages because no work is ordered under certain items or because of the quantities of Goods or Services actually completed are less than any estimates of quantity that have been or may be furnished to Seller.

36.0 BUYER FURNISHED MATERIALS

36.1 Seller shall carefully note any visible shortage or damage to Buyer's furnished items prior to Seller's acceptance of delivery thereof and shall assume full responsibility for any loss or damage of such items thereafter. Seller shall promptly notify Buyer if any items supplied to Seller are surplus and, without additional compensation, shall cooperate in the disposition of such surplus.

37.0 FORCE MAJEURE

37.1 Any delay in or failure of performance by the Seller hereunder shall be excused if and to the extent caused by a "Force Majeure Event". Force Majeure Events are defined as fire, explosion, act of God, act of the public enemy, and change in law, provided that such event is beyond the control of and

without fault on the part of the Seller and the effects of which could not be prevented or avoided by the exercise of due care or foresight.

37.2 In the event Seller, by reason of a Force Majeure Event, is rendered unable to perform any of its obligations or comply with any conditions under the Purchase Order, Seller shall give written notice to Buyer no later than three (3) days after the occurrence of such Force Majeure Event, with a description of the particulars of the Force Majeure Event, including the estimated duration of said Force Majeure Event or the effect thereof and the probable impact on Seller's performance under the Purchase Order. The effects of said Force Majeure Event shall, so far as possible, be remedied by Seller with all reasonable dispatch, and Seller shall use its best efforts to eliminate and mitigate the consequences thereof. The time for Seller's performance may be extended for a period equal to the time such performance is delayed by said Force Majeure Event, but such relief shall be conditioned upon Seller's initial and continued satisfaction of the notice, reporting, remedy and mitigation, and other requirements of this Article 37.2 in relation to said Force Majeure Event. Under no circumstances shall Seller be entitled to any additional compensation or damages of any kind or character by virtue of a Force Majeure Event. Any claim by Seller for an extension of time arising out of any alleged Force Majeure Event shall be made to Buyer in accordance with Article 9.0.

38.0 DISPUTES

38.1 In the event a dispute arises between the Parties regarding the application or interpretation of any provision of the Purchase Order, the aggrieved Party shall give notice in writing to the other Party and the Parties shall negotiate in good faith and attempt to resolve such dispute. If the Parties fail to resolve the dispute within thirty (30) days after delivery of such notice, each Party shall have the right to pursue any and all remedies available to it hereunder or available to it at law or in equity. Notwithstanding the existence of a dispute between the Parties and regardless of whether such dispute is the subject of dispute resolution pursuant to this Article 38.0, Seller shall not be entitled to suspend or otherwise delay its performance under the Purchase Order.

38.2 Notwithstanding any other provision of this Article 38.0, in the event: a) Owner and Buyer become involved in any arbitration, mediation, litigation or other proceedings in connection with the Prime Contract, and b) Buyer determines that it would be appropriate that disputes under this Purchase Order be resolved in the dispute proceeding due to the existence of common issues of fact or law, Seller shall consent to joinder to, and a consolidated resolution of issues in, that proceeding. Seller hereby consents to such joinder and irrevocably waives any objection which it may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction, including any objection to the laying of venue based on the grounds of forum non conveniens and any objection based on the grounds of lack of in personam jurisdiction.

38.3 In the event Seller submits or pursues a poorly substantiated or frivolous change order or claim against Buyer or Owner or their respective other contractors, Buyer shall be entitled to backcharge Seller for all cost and expense (including but not limited to attorneys fees) incurred by Buyer and/or Owner because of such change order or claim. In the event Seller should submit and/or pursue any such change order or claim against Buyer, Seller shall pay to Buyer any and all costs and expenses (including but not limited to attorneys fees) incurred in investigating and/or defending against and/or resolving such claim or change order, within ten (10) days after Buyer's submission of its invoice (which may be interim or total) to Seller therefor.

39.0 NO THIRD PARTY OR OTHER CLAIMS

39.1 Seller agrees that nothing in any agreement between Owner and Buyer creates any rights in favor of Seller and Seller covenants not to sue Owner or Buyer as a third-party beneficiary of any such agreement.

39.2 Seller agrees that any claims it may have for additional compensation or economic loss of any kind or character arising out of its performance of the Purchase Order or otherwise in connection with the Purchase Order shall be made solely as provided for in Article 9.0. Seller covenants not to assert any such claim against Owner and Buyer or Owner's or Buyer's respective other contractors and Seller covenants not to sue Owner or Owner's or Buyer's respective other contractors on any such claim, whether based upon delay, contract, tort, negligence, warranty, indemnity, strict liability, error or omission or otherwise, and agrees that it shall assign any such claim it may have in that regard to Buyer if and when requested by Buyer in connection with any adjustment pursuant to Article 9.0 hereof.

40.0 DAMAGES

40.1 In no event shall Owner, Buyer, or any of their respective parents, affiliates, subsidiaries, representatives or any directors, officers, or employees of any of the foregoing be liable to Seller or any of its Subsuppliers, whether based on delay, contract, tort, negligence, warranty, indemnity, strict liability, error or omission or otherwise, for any consequential, special, incidental, indirect, exemplary, multiple or punitive damages or damages arising from or in connection with loss of use or loss of revenue or profit, actual or anticipated, or otherwise. Seller hereby releases Owner, Buyer and each of their respective parents, affiliates, subsidiaries, representatives or any directors, officers and employees from any such liability.

41.0 GOVERNING LAW AND VENUE

41.1 The Purchase Order, unless it expressly provides to the contrary in the "Purchase Order Form", shall be governed by and construed in accordance with the laws of the State of New York, excluding any provisions or principals thereof which would require the application of the laws of a different jurisdiction. Any litigation initiated by and between the Parties arising out of or relating to the Purchase Order shall be conducted in the federal or state court of jurisdiction in the State whose laws govern the Purchase Order, and Buyer and Seller each consent to the jurisdiction of such court.

42.0 ARTICLE HEADINGS

42.1 The Article headings herein have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of anything herein contained nor govern the rights and liabilities of the Parties.

43.0 INSPECTION/TESTING/ACCEPTANCE

43.1 All Goods shall be subject to inspection and testing by the Buyer and/or Owner on Seller's or its Subsupplier's premises before, during, and after manufacture, at reasonable times. Notwithstanding any inspection at Seller's or its Subsupplier's premises, acceptance of the Goods shall be at the Facility Site unless expressly indicated otherwise in the Purchase Order.

43.2 If any inspection or test, whether preliminary or final, is to be made on Seller's or its Subsupplier's premises, Seller shall ensure that the Buyer is furnished, without additional charge, all reasonable facilities and assistance required for such inspection or test to be conducted safely and conveniently. Any inspection or test by the Buyer or failure to inspect or test by the Buyer shall not

relieve Seller of any responsibility or liability with respect to the Goods, nor shall any such inspection or test or failure to inspect or test be interpreted or in any way imply acceptance of the Goods.

43.3 If the results of the tests conducted indicate that any Goods or Services so not comply with the requirements set forth in the Purchase Order, the Seller shall, at his expense, make all necessary adjustments, repairs, replacements or changes in order to attain the required compliance. Until the required compliance is achieved, all subsequent tests by Buyer or the Owner shall be made at Seller's expense.

44.0 BACKCHARGE; OFFSET

44.1 Buyer may accomplish any required redesign, repair, rework or replacement of any nonconforming Goods or Services by the most expeditious means available, and backcharge Seller for the costs and expenses incurred.

44.2 If Seller requests Buyer to provide the services of its personnel or equipment, or provide permanent, temporary or consumable materials for Seller's use, Buyer will charge Seller for such items in accordance with Articles 44.4 and 44.6 below.

44.3 In the event of emergency, Buyer may proceed to furnish Goods or Services and backcharge Seller for Buyer's costs and expenses.

44.4 The cost of such backcharge shall include but not be limited to:

- a. fully burdened labor costs;
- b. material costs including shipping and handling;
- c. subcontractor or subsupplier costs directly related to performing the backcharge work;
- d. equipment and tool rentals at Buyer customary rates; and
- e. a factor of fifty percent (50%) shall be applied to the total of the foregoing Articles 44.4(a), (b) (c) and (d) for indirect, overhead and administrative costs for the circumstances set forth in Article 44.1, 44.2 and Article 44.3 above.

44.5 Prior to completion of the Purchase Order, backcharge costs will be treated as a Purchase Order Price adjustment. Seller shall pay the invoice within ten (10) days from receipt. Buyer's right to backcharge is in addition to any and all other rights and remedies provided in the Purchase Order or by law. The performance of such backcharge by Buyer shall not relieve Seller of any of its responsibilities under the Purchase Order.

44.6 Independently of its backcharge rights, Buyer shall at any time and from time to time be entitled, but not required, to offset, against any obligation of Buyer to Seller, any obligation of Seller to Buyer, by giving Seller written notice thereof.

45.0 PRODUCT INFORMATION

45.1 If any design change at any time ever occurs (or is seriously contemplated) to any component of the Goods or Services to be supplied under the Purchase Order, Seller shall immediately advise Buyer of such design change, and concurrently provide Buyer with a full written description of such design change, the reasons for it, and all known or suspected impacts, implications, consequences, and details thereof, particularly including but not limited to any matters relating to performance, configuration, size, weight and durability. If after giving the matter reasonable consideration Buyer is not willing to accept such design change, any component, material, or other item of any kind incorporating or affected by such design change shall be deemed defective and therefore rejected under the Purchase Order and Seller shall immediately cause such

component, material or other item to be replaced at its sole cost and risk with component, material or item which does not incorporate and is not affected by such design change.

45.2 Prior to furnishing any Goods or Services under the Purchase Order, Seller shall furnish to Buyer in detail all pertinent information concerning the operating history of any product to be furnished hereunder, particularly including but not limited to any deficiencies, problems or customer complaints relating thereto. Seller shall thereafter promptly keep Buyer current with regard to any new developments regarding such operating history, particularly including but not limited to any deficiencies, problems or customer complaints.

46.0 INDEPENDENT CONTRACTOR

46.1 Seller is an independent contractor, and neither an employee, agent, nor representative of the Buyer or the Owner, and shall maintain complete control of, and responsibility for, its Subsuppliers, employees, agents, means, methods, and operations.

47.0 COMPLETE AGREEMENT

47.1 The Purchase Order constitutes the complete agreement between the Parties with respect to the subject matter hereof, and supercedes all prior written or oral contracts, agreements, representations and/or understandings of any kind or nature that the Parties may have entered into or had prior to the date hereof with respect to the subject matter hereof.

47.2 Seller shall have accepted these Conditions provided Seller has received these Conditions, and either a) received payment; or b) started performance under the Purchase Order.

END OF GENERAL CONDITIONS