



## Purchase Order Terms & Conditions

### 1. DEFINITIONS

- 1.1 "Conditions" means the Terms and Conditions set out herein which shall be binding on both parties.
- 1.2 "Contract" means the Contract or Agreement between Vendee and Vendor, if any.
- 1.3 "Delivery Date" means the date or dates specified in the Purchase Order by which the Vendor is required to deliver or complete the Work. Additional Delivery Dates may be included in the Contract, to which Vendor must adhere.
- 1.4 "Order" means the Vendee's Purchase Order to which Terms and Conditions herein shall apply.
- 1.5 "Work" means any services, labor, goods, materials and/or equipment or part thereof to be provided under the Order.
- 1.6 "Vendee" means any reference to Owner, Buyer, or Customer.
- 1.7 "Vendor" means any reference to Contractor, Consultant, Company, Firm, Supplier, Seller, person, or any entity to whom the Purchase Order is issued.

### 2. CONTROLLING DOCUMENT

- 2.1 If the Contract and this Order contain different requirements for Vendor, the Contract shall control.
- 2.2 If the Contract is silent as to any item listed herein, this Order shall control.

### 3. DELIVERY

- 3.1 The failure to deliver or complete the Work by the Delivery Date shall entitle Vendee to terminate the Order and the Contract (if any) to which this Order applies, or any part thereof.
- 3.2 Failure to deliver or complete the Work as agreed upon by the Delivery Date shall be considered a breach of these Conditions and the Contract (if any) to which this Order applies. The Vendor shall be responsible to pay any penalties and damages imposed upon or incurred by the Vendee for failure of Vendor to deliver Work according to the Order.
- 3.3 The Vendor shall bear the cost of packing, loading and carriage of the Work unless otherwise agreed by both parties hereto. The Vendee shall have the right to designate the carrier or railroad over which these materials shall be routed provided this shall not entail additional cost to the Vendor.
- 3.4 If the Work is delivered to the Vendee in excess of the quantities ordered, the Vendee shall not be bound to pay for the excess and any excess will be and will remain at the Vendor's risk and will be returnable at the Vendor's expense.

### 4. INSPECTION AND TESTING

- 4.1 Vendor agrees to permit the Vendee or Vendee's designee to inspect and test the Work any time prior to acceptance or delivery, as the case may be.
- 4.2 Vendee shall have the rights, without prejudice, to reject any Work performed or delivered by the Vendor if such Work is defective or in non-compliance with the Terms and Conditions herein.
- 4.3 Any Work so rejected shall immediately be replaced or corrected as required by Vendee at Vendor's expense. Vendor shall re-submit the re-performed Work for re-inspection and re-testing. Such replacement or remedy shall not relieve the Vendor from any liability due to defects subsequently found in the Work in terms of materials and/or workmanship.

### 5. ACCEPTANCE

- 5.1 The parties agree that no certificate given or payment made under this Contract, except the final certificate of payment, shall be conclusive evidence of performance of this Contract, either wholly or in part, and that no payment shall be construed to be an acceptance of defective or improper Work.
- 5.2 Vendee's count will be accepted as final and conclusive on all shipments not accompanied by a packing ticket.

### 6. TITLE AND RISK

- 6.1 Title in the Work shall pass to Vendee on the earlier of the following two (2) occasions:
  - 6.1.01 Payment for the Work (when title shall pass in proportion to the payments made therefore).
  - 6.1.02 Acceptance of the Work by Vendee.
- 6.2 Notwithstanding passage of title (in whole or in part) on the occurrence of 6.1.01 above, risk shall remain with Vendor until delivery or acceptance of the Work by Vendee in accordance with the provisions of the Order, whichever shall be the later.

### 7. DEFECTS/NON-CONFORMING WORK

- 7.1 Vendor shall provide the warranties set forth in Section 8 hereof and hereby undertakes, upon three (3) days written notice from Vendee, to return to the Site and repair any Work falling under the warranties for the period of time set forth in the Contract or, if no return-and-repair warranty is set forth in the Contract, for a period not be less than twelve (12) months from the date that Work is put into service by the Vendor (the "Warranty Period"). The Vendor shall be responsible at its own expense for remedying any defects that may arise from the Work during the Warranty Period.
  - 7.1.01 Where a defect arises within the Warranty Period, but does not become apparent until the Warranty Period has expired, Vendor's liability shall not cease merely because Vendee has been unable to give notice of the defect to Vendor within the said Warranty Period.
- 7.2 The Warranty Period shall extend for a further period of twelve (12) months for all remedial Work carried out under the Warranties. If any defects which Vendor is obliged to remedy under this Clause are not remedied within the time required under the Contract or otherwise within a reasonable time, or circumstances render it impracticable for Vendor to do the

same, Vendee may remedy the defect or authorize others to do the same, and Vendor shall reimburse Vendee for all costs arising therefrom within ten (10) days of Vendee's demand.

7.3 The warranties set forth in Section 8 and Vendee's remedies hereunder are in addition to Vendee's other rights and remedies existing under the Order or at law.

## **8. WARRANTIES**

8.1 The Vendor warrants that the Work shall:

8.1.01 Conform to requirements, specifications, drawings, quality or any other descriptions outlined in the Order and the Contract (if any) to which this Order applies;

8.1.02 Be constructed with sound materials and first-class workmanship capable of any standard of performance specified in the Order;

8.1.03 Be without defects and fit for the intended purposes for which the Order is placed.

8.2 The Vendor warrants all Work shall be carried out by suitably competent personnel and equipment supplied shall be new unless the specifications permit otherwise, and in safe operating condition. Vendor shall replace as soon as practicable any such equipment or personnel at Vendor's sole cost and risk if not adequate in the reasonable opinion of the Vendee.

8.3 The Vendor warrants all Work will at no time infringe any intellectual property rights or any other right relating to any third party.

8.4 The Vendor warrants all Work furnished hereunder shall comply, in every respect, with all federal, state, city and local laws and municipal codes, ordinances and regulations relating hereto. Where the Vendor performs Work that must comply with these requirements, the Vendor will ensure that the process is complete to the satisfaction of the regulatory agency responsible for the Work type (i.e. NYC Department of Buildings, Dept of Transportation, EPA, etc.). The Vendor shall present evidence to the Vendee that the regulatory agency has accepted its filing. Appropriate retention against billings will be held when applicable until such time evidence is presented.

8.5 The Vendor warrants all Work is free from defects in the material and workmanship and all equipment, products and material is free from defect in design.

8.6 All other warranties, express or implied, including any warranty of merchantability and fitness for a particular purpose, are in effect and not disclaimed

## **9. INDEMNITIES**

9.1 Vendor shall indemnify, defend and hold harmless Vendee and its principles owners and agents against any action, liability, cost, or expense whatsoever arising by reason of:

9.1.01 The breach of any applicable provisions of these Conditions;

9.1.02 Any infringement or alleged infringement of any Intellectual Property rights caused by the use, construction, installation, manufacture or sale of the Work;

9.1.03 Injury to, or death of, any persons caused or contributed by Vendor's negligence or breach of these Conditions or other legal duty of Vendor or, irrespective of the negligence or breach of duty of Vendee, loss or damage to any property;

9.1.04 All consequential or indirect losses, whether foreseeable or not, including legal fees, incurred by Vendor, irrespective of the negligence or breach of duty of Vendee;

9.1.05 Any claim made against the Vendee in respect of any loss sustained by the Vendee's employees or agents or by any customer or third party to the extent that such loss was caused by, relates to, or arises from, the Work.

## **10. LIMITATION OF LIABILITY**

10.1 To the extent permitted by applicable law, in no event will Vendee or its affiliates be liable to Vendor for any lost revenues, lost profits, incidental, indirect, consequential, and special or punitive damages. In no event shall Vendee's liability to Vendor exceed the total amount of fees actually paid by Vendee to Vendor hereunder.

## **11. INSURANCE**

11.1 Vendor performing work onsite shall provide General Liability, Automobile Liability, Property Liability, Professional Liability (if applicable) and Workers Compensation insurance at no cost to Vendee. Coverage amounts and terms shall be as provided in the Contract (if applicable) but in no event less than \$2,000,000 per occurrence. All policies shall name the Vendee and the Managing Agent of the Site as Additional Insureds.

## **12. TERMS OF PAYMENT**

12.1 Payment shall be made within sixty (60) days from the date Vendee receives the invoice, provided that the Vendee: 1)receives a correct and valid invoice; 2)the Work is delivered or has been properly performed in accordance with these Conditions and the terms and conditions of the Contract 3)the Vendee accepted the Work.

12.2 If the Work is not delivered or performed in accordance with these Conditions and the terms and conditions of the Contract or the Vendee has not accepted the Work, the invoice shall be paid within sixty (60) days following the date when the discrepancy is corrected to the Vendee's satisfaction.

12.3 Vendor shall pass along to Vendee any discount that it receives in the cost of the Work. Any discount provided in these Conditions, the Order, and/or any Contract related thereto shall be based upon the gross amount of the invoice.

12.4 Vendor shall pay all taxes, import fees and the like related to the performance of the Work.

12.5 Vendee shall be entitled at all times to offset any credit amount due from Vendor against any amount payable at any time in connection with the Order.

12.6 The Vendor must present a complete and accurate invoice to the Vendee within 365 calendar days from Work's acceptance by the Vendee. The Vendee will not be responsible to pay for any Work if the Vendor has failed to present an invoice within this timeframe

## **13. LIENS AND CLAIMS**

13.1 Vendor agrees to pay, discharge and hold Vendee harmless from all liens, claims (including legal fees and other expenses incidental thereto), judgments and awards which may arise out of or in connection with the Order. Vendor shall, at Vendee's request, furnish proof satisfactory to Vendee that all such liens, claims, suits, judgments and awards have been satisfied or released.

## **14. ASSIGNMENT AND SUB-CONTRACTING**

- 14.1 Vendor shall not assign or sub-contract any part of the Work without Vendee's prior written consent. No assignment or sub-contract shall relieve Vendor of any of its obligations under the Order. Vendor shall ensure that these Conditions will be included in all sub-contracts entered into by Vendor in connection with the Work.
- 14.2 Except to the minimum extent required by applicable law, Vendor will not be permitted to display any signs, posters, etc. on or around the building or the Site without the express written consent of the Vendee.
- 15. SUSPENSION AND TERMINATION**
- 15.1 This Purchase Order may be terminated by Vendee with or without cause.
- 15.1.01 If Vendee terminates without cause, Vendee will pay Vendor for Vendor's actual and reasonable expenses for Work that has been satisfactorily completed, in Vendee's discretion, as of the date of termination, but in no event will such payment exceed the agreed upon prices.
- 16. INTELLECTUAL PROPERTY RIGHTS**
- 16.1 Vendor irrevocably assigns its entire right, title and interest to any Intellectual Property Rights it may have at any time in the Work to Vendee, including the right to initiate court or other proceedings or to take any other action against any person for infringement of the Vendor Intellectual Property Rights.
- 16.2 All patterns, tools, drawings or documents, whether in hard copy or otherwise, supplied by Vendee shall remain Vendee's property and shall not be used by the Vendor in the service of any other company or individual. All such items shall be returned to Vendee upon completion of the Work or at Vendee's instruction.
- 17. GOVERNING LAW AND JURISDICTION**
- 17.1 To the extent permissible under State law where the Project is located, this Order and Conditions, and the applicable Contract, shall be governed, construed and interpreted in accordance with the laws of NY without regard to any conflicts-of-laws, rules or principles that might refer the governance or construction to any other jurisdiction, except only that the Lien Laws of the State of New Jersey shall apply to all Work performed in the State of New Jersey.
- 18. NOTICES**
- 18.1 Notices shall be validly given at the respective addresses of the parties stated in the Purchase Order.
- 19. MODIFICATION**
- 19.1 No agreement or other understanding in any way modifying these Conditions and/or the Order, and/or any Contract to which they relate, will be binding upon Vendee unless made in writing and signed by its authorized representative.
- 20. SEVERABILITY**
- 20.1 If any provision of this Order and Conditions is invalid or unenforceable as against any person or under certain circumstances, the remainder of this Order and Conditions, and the applicability of such provisions to other persons or circumstances, shall not be affected thereby. Each provision of this Order and Conditions, except as otherwise herein provided, shall be valid and enforced to the fullest extent permitted by applicable law.