

PORTA-FAB CORPORATION

PURCHASE ORDER TERMS AND CONDITIONS

- 1. PURCHASE ORDER.** This Purchase Order becomes a binding contract upon the terms set forth herein when accepted by Buyer and Seller, either by acknowledgment or by the commencement of performance hereof. No revision of this Purchase Order shall be valid unless in writing and signed by authorized representatives of Buyer and Seller, and no condition stated by Seller or in Seller's form which is inconsistent with or in addition to the terms and conditions herein shall be binding unless expressly accepted in writing by Buyer.
- 2. WARRANTY.** Seller agrees and warrants that the material, equipment or services furnished hereunder will meet the specifications herein, and shall be free from defects in material and workmanship. This warranty shall remain in effect for a period of one (1) year from the date of Buyer's acceptance of the goods or services or such time mutually agreed by the parties. Seller's warranty shall not apply to defects arising out of misuse of Seller's products, modifications or repairs by others, or the failure to properly maintain such products. This warranty is in addition and supplemental to any warranties provided by law or elsewhere in this Purchase Order.
- 3. RESPONSIBILITY FOR PRODUCTS.** Seller shall be responsible for and shall bear all risks of loss or damage to Seller's products until delivery to Buyer or its specified jobsite. In the event Seller delivers materials to the jobsite, Seller shall remove its waste materials from the site as is necessary to maintain the premises in a clean, safe and orderly condition at all times.
- 4. THIRD PARTY APPROVAL/CANCELLATIONS.** All goods and services furnished under this Purchase Order shall be subject to the reasonable approval of the Buyer. Seller shall furnish the required submittal data or samples for such approval. In the event approval is not secured from Buyer or if the order to Buyer is canceled for any reason, cancellation of this Purchase Order shall occur automatically, and no obligation of any description whatsoever shall exist on the part of Buyer toward Seller, except to return any unused goods and/or to pay for goods and services already used or furnished, or which are in progress at the time of termination, at the prices reflected in this Purchase Order.
- 5. INSPECTION/REJECTION.** All goods and services supplied hereunder shall be received subject to inspection and rejection. Defective or non-conforming goods will be held for Seller's account at its risk and, if Seller so directs, will be returned at Seller's expense. Rejected goods shall not be replaced without a new order. In addition, Seller shall reimburse Buyer for all actual direct costs reasonably incurred by Buyer as a result of such defective or non-conforming goods or Seller's failure to deliver conforming goods in a timely manner. Seller shall reimburse Buyer for such actual damages and expenses to the extent caused by Seller's late or defective delivery or performance. Payment for goods or services prior to inspection shall not constitute acceptance thereof, nor will acceptance remove Seller's responsibility for defects.
- 6. DELIVERY.** Time is of the essence on this order. If delivery of the goods or performance of services is not completed by the time or times specified herein due to the fault of Seller or others under Seller's control, Buyer may (i) accept late delivery or (ii) cancel the order in whole or in part without liability respecting any goods not delivered or services not performed. In either case, Buyer shall be entitled to reimbursement for its actual damages and other costs directly resulting from such delay. Further, Buyer shall be entitled to exercise such other rights and remedies as it may have at law or in equity, including any right it may have to specific performance of this Purchase Order. Seller's time for delivery shall be reasonably extended due to events of Force Majeure.
- 7. PAYMENT.** Payment shall be made pursuant to such terms and conditions as may be provided on the reverse side hereof or as otherwise specifically acknowledged in writing by both parties. Buyer shall pay Seller's costs of collection, including reasonable attorney fees, if Seller does not make payment when due.
- 8. RETURN FOR CONVENIENCE.** Buyer reserves the right to return to Seller at the invoice price, all items which are regularly carried by Seller's stock. Buyer shall be liable for reasonable restocking and other direct costs of Seller for return of goods as mutually agreed upon between the parties prior to issuance of a PO.
- 9. CHANGES.** Buyer may at any time request to change the quantity or specifications for, or time of delivery of, the goods or services to be supplied hereunder. If such change causes an increase or decrease in the cost of performing or time required for performance of this Purchase Order, then unless such change is necessitated by the act or omission of Seller, an equitable adjustment shall be made in the price and/or delivery schedule; provided that no such change or adjustment shall be made without written consent of Buyer.
- 10. TAXES AND ASSESSMENT.** Seller is an independent contractor and, except to the extent otherwise specifically stated in this Purchase Order, Seller accepts full and exclusive liability for the payment of any and all taxes and assessments which may now or hereafter be imposed by state, local or federal government. If indicated on the face of this Purchase Order, it is agreed that the purchase price includes all Federal, State or local taxes imposed on account of the manufacture, sale or delivery of the goods or services furnished hereunder.
- 11. LAWS AND REGULATIONS.** Seller warrants that all goods sold hereunder shall strictly comply with all applicable laws and regulations governing Seller's production and sale of such goods, to which the goods are subject, including OSHA. Seller shall execute and deliver such documents as may be required to effect or to evidence compliance. All laws and regulations required to be incorporated in agreements of this character are hereby incorporated herein by this reference. In no event shall Seller be liable for the Buyer's or end user's violation of any laws relating to the use or installation of Seller's products, including applicable building codes. In addition, in the event this Purchase Order creates a subcontract under a contract with the United States government, any state or any political subdivision thereof, any provisions which must under Federal, State and/or local law be included in such subcontracts shall also be deemed incorporated herein by this reference. Seller and its employees and representatives shall at all times comply with all applicable laws, ordinances, statutes, rules and regulations relating to the production of such goods.
- 12. INDEMNITY.** To the extent of its negligence or willful misconduct, or the negligence or willful misconduct of others under its control, Seller agrees to hold Buyer and Buyer's customer, harmless from and to defend and indemnify it against all loss, liability, damage, cost and expense (including attorney's fees and direct, indirect, special, incidental or consequential damages) for any claim of injury to person or damage to property caused by any wrongful act or omission of Seller, its agents or employees in providing goods under this Purchase Order. However, Seller shall not be liable for any damages to the extent caused by the negligence or willful misconduct of Buyer.
- 13. INSURANCE.** Seller shall obtain and maintain general liability and other insurance for personal injury and property damage as required by Buyer. Upon request of Buyer, Seller shall furnish Buyer acceptable proof of such insurance.
- 14. PATENT INFRINGEMENT.** Unless Buyer provides the design of the goods, Seller shall indemnify, hold harmless and defend Buyer against any claims, damages, judgments, losses, liabilities and expenses arising out of any claim for infringement of any patent by reason of the purchase, sale, or other disposition of any goods furnished hereunder.
- 15. ASSIGNMENT/SUBLETTING.** Neither this Purchase Order nor any rights or obligations under it shall be assigned (whether by operation of law or otherwise) or contracted to third parties by either party without the other party's prior written consent. Any attempted assignment or subcontracting without the other party's consent shall be void. Buyer's permission to subcontracting and/or assignment is expressly conditioned upon the subcontractor or assignee assuming all of the obligations of Seller hereunder.
- 16. CANCELLATION.** In the event of any proceeding by or against Seller in bankruptcy or insolvency or appointment of a receiver or trustee, or an assignment for the benefit of creditors of Seller, or in the event of a breach by Seller of any of the material terms hereof, including any warranties hereunder, Buyer may cancel this and any or all other orders or contracts between Buyer and Seller, or reduce the quantity of goods to be delivered hereunder, without liability respecting goods not previously delivered or services not performed and without prejudice to Buyer's right to damages or other remedies on account of such breach.
- 17. SEVERABILITY AND WAIVER.** The partial or complete invalidity of any one or more provisions of this Purchase Order shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Purchase Order or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance for the same or any other cause.
- 18. DISPUTE RESOLUTION.** All disputes arising under this Subcontract shall be determined in accordance with the dispute resolution procedures recommended by the American Arbitration Association.
- 19. CONSEQUENTIAL DAMAGES.** Notwithstanding any other provision, in no event shall either party be liable to the other for special, incidental, or consequential damages of any type.
- 20. ENTIRE AGREEMENT.** This Purchase Order constitutes the entire agreement with respect to the sale and purchase of the goods and/or services specified herein. No modification hereof shall be effected by the acceptance or acknowledgment of order forms of Seller specifying additional or different conditions, all of which are hereby objected to, and no modification shall be effective unless signed in writing by the party claimed to be bound thereby. The rights, obligations and remedies of the parties shall be governed by the laws of the jurisdiction in which the Project is located. The parties agree that dispute resolution shall be conducted in the jurisdiction where the Project is located.