

TERMS AND CONDITIONS

(for purchase of materials)

CONTRACT: This Contract for the purchase of goods (the "Goods") is composed of Buyer's Purchase Order, any written Change Order and these Terms and Conditions. This Contract expressly excludes any of Seller's terms and conditions of sale or any other document issued by Seller in connection with this Contract.

TIME: Time is of the essence of this Contract.

CHANGE ORDER: Buyer may, from time to time, initiate changes by issuing to Seller written notices (each, a "Change Order") that alter, add to, or deduct from the Goods, but that are otherwise subject to this Contract. Seller will promptly comply with the terms of any Change Order.

DELIVERY: Seller shall deliver the Goods at the delivery point (the "Delivery Location"), and on the date(s) specified in this Contract (the "Delivery Date"). If no delivery date is specified, Seller shall deliver in full within a reasonable time of receipt of the Contract. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Contract immediately and Seller shall indemnify Buyer against any losses, damages, and reasonable costs and expenses attributable to Seller's failure to deliver.

INSPECTION: Buyer reserves the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may reject all or any portion of the Goods if it determines the Goods are defective or nonconforming. Any inspection or other action by Buyer shall not affect Seller's obligations under the Contract.

CUMULATIVE REMEDIES: The rights and remedies under this Contract are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise.

PRICE AND PAYMENT: The price of the Goods is the price stated on the face of this Contract (the "Price"). Seller shall invoice Buyer for the Contract within thirty (30) days of delivery. Unless otherwise stated in the Contract, Buyer shall pay all properly invoiced amounts due to Seller within sixty (60) days after receipt of such invoice, except for any amounts disputed by Buyer. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Contract notwithstanding any such dispute. Without prejudice to any other right or remedy, Buyer reserves the right to set off any amount owing to it by Seller against any amount payable by Buyer to Seller. Payment of an invoice is not evidence or admission that the Goods meet the requirements of the Contract.

TERMINATION: Buyer may terminate this Contract, in whole or in part, for any reason upon thirty (30) days' prior written notice to Seller. In addition to any remedies provided herein, Buyer may terminate this Contract with immediate effect, either before or after acceptance of Goods, if Seller has breached any of the terms of this Contract. If the Seller becomes insolvent, commences or has commenced by it or against it bankruptcy proceedings, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Contract. If Buyer terminates the Contract for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.

WARRANTIES: Seller warrants to Buyer that for a period of twelve (12) months from the Delivery Date, all Goods will: (a) be new and free from any defects in workmanship, material and design; (b) conform to applicable specifications; (c) be fit for their intended

purpose and operate as intended; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party's intellectual property rights; *provided, however*, that with respect to any latent defects that were not reasonably discoverable by Buyer, the warranty shall be extended until 90 days following discovery of such latent defect. Seller warrants and represents to Buyer that it is in compliance with and shall remain in compliance during performance of this Contract, and ensure that its employees, agents, contractors and subcontractors comply with all applicable laws, regulations and ordinances. These warranties survive any delivery, inspection, acceptance or payment. These warranties are cumulative and in addition to any other warranty provided by law or equity. If Buyer gives Seller notice of noncompliance, Seller shall, at its own cost and expense, promptly replace or repair the nonconforming Goods to Buyer's satisfaction.

INDEMNIFICATION: Seller shall defend, indemnify, and hold harmless Buyer and Buyer's parent company, its subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders, and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses") arising out of or occurring in connection with Seller's performance of its obligations or Seller's negligence, willful misconduct or breach of the terms of this Contract or any allegation that possession or use of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement without Buyer's prior written consent.

PERMITS: Subcontractor shall at its own expense obtain all permits necessary for its performance under this Contract.

INSURANCE: Seller shall purchase and maintain such insurance as will protect Seller from claims which may arise out of or result from Seller's operations and performance under this Contract and for which Seller may be legally liable. Coverages shall be maintained without interruption during the term hereof. Seller shall deliver to Buyer before delivering any Goods hereunder Certificates of Insurance in form and substance satisfactory to Buyer evidencing the required coverages. The coverage afforded under any insurance policy shall be primary to any valid and collectible insurance carried separately by Buyer. Furthermore, all policies and Certificates of Insurance shall expressly provide that no less than thirty (30) days' prior written notice shall be given Buyer in the event of material alteration, cancellation, nonrenewal, or expiration of the coverage contained in such policy or evidenced by such certified copy or Certificate of Insurance. The insurance shall be written for not less than the following limits of liability or as required by law, whichever coverage is greater: (a) commercial general liability (including product liability) in a sum no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; (b) workers' compensation insurance in compliance with the applicable laws of each jurisdiction affected by the Contract; (c) if the Seller will use or provide for use of motor vehicles in providing and/or performing the Contract, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of no less than \$1,000,000.

SHIPPING TERMS: Delivery shall be made in accordance with the terms of this Contract. The Contract number must appear on all documents pertaining to the Contract, invoices, packing lists,

correspondence, and all shipping documents. Seller shall not substitute material or ship more than the quantity ordered. Supplier shall be solely responsible for and pay all costs of delivering the Goods to the Delivery Location, including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar analogous taxes on imports/exports of the Goods (“Customs Duties”). Supplier will take all reasonable steps to minimize Customs Duties costs.

TITLE AND RISK OF LOSS: Unless otherwise specified in the Contract, risk of loss of the Goods remains with Seller and title will not pass to Buyer until the Goods are delivered to and accepted by Buyer at the Delivery Location.

TAXES: Unless specified otherwise on the face of the Contract, all prices are inclusive of, and Seller shall be solely responsible for and pay, all federal, state, and local taxes, including, but not limited to, value added tax, goods and services tax, sales, use or consumption tax. No sales or use tax shall be added when a valid tax exemption is indicated on the face of this Contract by Buyer.

FORCE MAJEURE: Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party’s fault or negligence, and which by its nature could not have been foreseen by such party (“Force Majeure Event”). If a Force Majeure Event prevents Seller from performance for a continuous period of more than fifteen (15) business days, Buyer may terminate this Contract immediately by giving written notice to Seller.

WAIVER AND RELEASE OF LIENS: Upon Seller receipt of amounts properly invoiced, Seller waives and releases all rights to, for itself and its subcontractors, and at its sole cost shall obtain prompt removal of, any lien fixed against Buyer, for Goods delivered under this Contract.

CONFIDENTIAL INFORMATION: All non-public, confidential or proprietary information of Buyer disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” in connection with the Contract is confidential, solely for the use of performing the Contract and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer’s request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this paragraph.

RELATIONSHIP OF THE PARTIES: Seller is an independent contractor of Buyer. Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever.

ENTIRE CONTRACT: This Contract comprises the entire agreement between the parties. Each party acknowledges that any representations, inducements, promises or agreements, oral or otherwise, which are made by any party and not embodied in this Contract shall not be valid or binding. This Contract supersedes all negotiations, conversations, discussions, correspondence and memoranda. All changes hereto must be in writing and signed by both parties.

SEVERABILITY: In the event any portion of this Contract should be declared to be invalid, the remaining portions shall remain in full force and effect and this Contract shall be interpreted so as to carry out the original intent of the parties.

CONSTRUCTION: The rule of construction that a written agreement is construed against the party preparing or drafting such agreement shall not be applicable to this agreement.

BINDING ON SUCCESSORS: This agreement is binding on and will inure to the benefit of the respective heirs, legal representatives, successors, and assigns of the parties; provided, however, that Seller shall not assign this Contract without Buyer’s prior written consent.

NON-WAIVER OF BREACH: The parties agree that failure by a party to require strict performance of any provision shall in no way affect the party's right to enforce the same, nor shall waiver by one party of any breach of any provision hereof be held to be a waiver of any succeeding breach of the same or any other provision of this agreement.

ATTORNEY FEES: The parties agree that in the event a legal proceeding is brought to interpret or enforce the terms of this Contract, the prevailing party shall be entitled to recover reasonable costs and attorney fees in the legal proceeding or any appeal.

GOVERNING LAW & VENUE: This Contract shall be governed by the laws of the State of Oregon without reference to conflict of laws principles, and the parties submit to the exclusive jurisdiction of the courts located in Lane County, Oregon and shall not claim that such jurisdiction or venue is invalid or inconvenient.