

MW Builders, Inc.  
10955 Lowell, Suite 300  
Overland Park, Kansas 66210  
Ph 913/345-0007 Fax 913/345-0889

## TERMS AND CONDITIONS

DATE: \_\_\_\_\_



P.O. NO. \_\_\_\_\_

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1. **Packing and Shipping:** (a) Every possible precaution and measure must be taken in packing, crating and preservation of equipment and/or materials prior to shipment to minimize in-transit and storage damage. This equipment is to be packed and preserved for outdoor shipping and storage, unless otherwise directed by Purchaser. (b) Each item of equipment shall be tagged or stenciled legibly identified and shall include the following: (1) name of Supplier; (2) shipping address; (3) P.O. #; (4) equipment I.D.#; (5) box and package no.; (6) weight. (c) A release date will be established. No fabrication is to be started or shipments made until approval is obtained on Supplier's submittal data and Supplier has received Purchaser's release. (d) Purchaser is to be advised by Supplier on shipping date of: routing, name of carrier, trailer or pro numbers; total weight; and estimated time of arrivals. Carrier MUST notify Purchaser at least 48 hours prior to delivery in order to facilitate unloading. (e) Neither delivery nor inspection of goods shall constitute acceptance of them. (f) Purchaser reserves the right to inspect the goods at any time prior to shipment as well as upon delivery. If materials are unacceptable, Purchaser may, at its option, (1) reject same, or (2) cause their correction, at Supplier's expense.
2. **Work, Liens and Waivers:** Supplier acknowledges that it is aware that the work which is the subject of this P.O. is to be performed as a part of, and the materials which are the subject of this P.O. are purchased for use in performance of, the contract between Owner and Purchaser, which includes, but is not limited to the specifications and plans ("Contract Documents"), all of which are incorporated herein by reference except those provisions, if any, of the General and Special Conditions of the Contract Documents which are inconsistent with the express terms of this P.O. Supplier agrees both to deliver the material to Purchaser and to perform the work free and clear of all claims, encumbrances or liens, and upon request by Purchaser to furnish waivers, releases or other evidence of payment from its suppliers, materialmen and others connected therewith. If Supplier is performing work, then Supplier shall provide sufficient, safe and proper working conditions at all times, shall maintain liability and other insurance in amounts, with coverage and companies satisfactory to Purchaser and shall on request furnish appropriate certificates to Purchaser evidencing such compliance.
3. **Warranties:** (a) Supplier warrants that all work and material shall be new, of first quality and construction, free from defects, of good workmanship, suitable for their intended purposes and in strict accordance with all requirements of the Contract Documents, and will meet all capacities, functional tests and criteria required in them. (b) Supplier warrants that it is in full compliance with all applicable laws, including but not limited to the Fair Labor Standards Act, OSHA EEOC and laws affecting employment of aliens. (c) Supplier shall furnish to Purchaser all MSDS sheets relevant to items furnished hereunder.
4. **Freight and Taxes:** Unless otherwise specified on the face hereof, freight and taxes are included in the total price shown on the face hereof to be paid Supplier by Purchaser, and Supplier assumes, accepts exclusive liability for and agrees to pay all freight and all taxes, contributions and assessments, including any federal, state, or municipal old age benefit, social security or unemployment compensation law and sales, use or other excise taxes.
5. **Time is of the Essence:** Supplier agrees to perform the work and furnish the materials called for so as not to impede or delay Purchaser or others in the performance of the Contract Documents.
6. **Indemnification:** Supplier agrees to indemnify, defend and hold harmless Purchaser and Owner and such other parties as identified in the Contract Documents from and against all claims, causes of action and expense (i) arising out of injury to (including death of) any persons or damage to property alleged to have been caused in whole or in part by any act or omission of Supplier, its agents, employees, sub-subcontractors, suppliers or invitees, (ii) caused in whole or in part by any act or omission (whether or not negligent) of Supplier, its agents, employees, sub-subcontractors suppliers or invitees, in the performance of the P.O. and (iii) arising out of (a) Supplier's payment of contributions, penalties or interest due under any state Employment Security Law; (b) any alleged defects or failures in Supplier's products; (c) all tax liabilities of Supplier; (d) any infringement of patent, trademark or trade secrets; and (e) any mechanic's liens or payment bond claims by those claiming payments owed by Supplier. Supplier shall defend all suits brought against Purchaser and/or Owner on account of any such claims of liability, shall pay any settlements made or judgments rendered with respect thereto, and shall reimburse and indemnify Purchaser for all expenses, including court costs and reasonable attorneys' fees, incurred by Purchaser. The obligations set forth in this paragraph are continuing and shall survive occupancy, completion of the construction project, termination of the P.O., acceptance of work, or final payment to Supplier.
7. **Changes:** Purchaser reserves the right to order changes in writing in the work and materials required hereunder and this P.O. shall be modified accordingly. No change shall be made in this P.O. without such written order and no claim of payment by Supplier for extras will be allowed unless such payment and such extra work and material are agreed to in writing by Purchaser.
8. **Defective Work:** If any work performed or articles delivered hereunder shall be condemned or rejected on the ground that such were defective in material or workmanship or did not conform to the Contract Documents, then, in addition to Supplier's other obligations and Purchaser's other rights, Supplier shall bear and reimburse Purchaser for such costs, expenses, delays and damages as Contractor and others shall incur as a result thereof, including replacement of such defective work and damage to other work, and shall perform Contractor's warranty to Owner with respect thereof.
9. **Remedies:** (a) If Supplier shall fail to perform in a timely manner, Purchaser may (in addition to all other rights) either demand immediate cure of Supplier's default, or Purchaser may obtain conforming goods elsewhere at Supplier's expense. In either case, Purchaser shall be entitled to recoup from Supplier all its loss, cost and expense incurred as a result of Supplier's default. (b) Purchaser may cancel this P.O. or any part of it at no penalty if prior to release for fabrication, or if said goods have been terminated from Purchaser's contract, in which case Purchaser will pay to Supplier such compensation as Purchaser receives from Owner or Supplier's behalf. If Purchaser terminates this P.O. for any reason, its maximum liability shall be the lesser of Supplier's cost to date of performing or the P.O.
10. **Disputes:** Supplier agrees that the dispute resolution provisions of the contract between Purchaser and Owner, if any, are incorporated by this reference as part of this P.O. so as to be binding as to disputes between Supplier and Purchaser that involve, in whole or in part, questions of fact and/or law that are common to any dispute between Purchaser and Owner or others similarly bound to such dispute resolution procedures, and that all such disputes may be consolidated for hearing and resolution by the same arbitration or other tribunal specified in the contract between Purchaser and Owner. Such consolidation may be effected directly by Supplier, if permitted, or by Purchaser.

Upon exhaustion of the dispute resolution above or if the dispute between Supplier and Purchaser does not fall within the conditions described above, Purchaser, at its sole option, has the right to elect resolution of all claims or disputes involving Purchaser, Supplier or other interested third parties by litigation in court, mediation and/or arbitration. If Purchaser elects to proceed with litigation in court, no action or proceeding shall be commenced or maintained except in the proper court where the project is located. If selected, mediation and arbitration will be conducted pursuant to the Construction Industry Rules of the American Arbitration Association. This P.O. shall be construed under the laws of the state where the project is located.

If Supplier files suit to protect lien or bond rights, it agrees to stay such proceedings to allow for any non-judicial dispute resolution process to be completed. Subsequent to such proceedings, the parties agree that disputes between them will be resolved by the proper court where the project is located.

If Supplier makes a claim of any nature, Supplier agrees to present such claim in writing, with full documentation therefore, to Purchaser within sufficient time for Purchaser to take the action required within the time limitations of the Contract Documents for asserting claims against Owner. Purchaser shall not be obligated to appeal from any decision, or to prosecute any claim on behalf of Supplier, and Purchaser may, at its option, abandon to Supplier any such claim by giving written notice to Supplier that Purchaser will no longer prosecute such claim. In such event, Supplier shall have the right to prosecute such claim in the name of Purchaser, but at Supplier's own cost and expense.

It is the intent of Purchaser to resolve disputes as quickly, efficient and amicably as possible. To this end, Purchaser reserves the right to require a meeting with senior management of Supplier within ten (10) days of demand by Purchaser to resolve outstanding disputes. Both parties must commit to use their best faith efforts to resolve disputes, and meet again, as necessary, to facilitate this process. If the dispute has not been resolved within twenty (20) days of the first meeting, Supplier may proceed with its other remedies under this P.O.

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Nothing contained herein shall excuse Supplier from completion of the work in the manner provided in this P.O., nor shall the pendency of any dispute or arbitration proceeding excuse any interruption, deficiency, delay, default or noncompliance therewith.

11. **Bond:** Purchaser at its option may require Supplier to give a bond for the faithful performances of this P.O., payable to Purchaser in amounts on a form and with a surety satisfactory to Purchaser.
12. **Pricing:** The price appearing on the face of this Purchase Order is final for the materials to be provided. However, if the price is omitted on this P.O. and not otherwise agreed to in writing, then the price to apply hereto will be the prevailing market price at (a) time of order or (b) time of delivery, whichever is less, at the sole discretion of Purchaser.
13. **Termination:** Purchaser by written notice to Supplier may at any time terminate and cancel this P.O. with respect to any work which remains undone and any materials which remain undelivered on the date of such notice. In the event of such cancellation, Supplier shall promptly stop all deliveries and work called for by this P.O. and Purchaser's responsibility to Supplier is limited to paying Supplier for all items and work so cancelled for which Owner pays Purchaser. Other than as specifically provided for herein, Supplier shall not be entitled to claim or recover damages or loss of profits from Purchaser on account of any such cancellation, delays suffered by Supplier, irrespective of cause, or the rejection by Purchaser or Owner as provided herein of any work performed or materials shipped under this P.O.
14. **Payment:** Supplier shall be paid by Purchaser as the work progresses, to the extent work of Purchaser utilizing such materials supplied hereunder shall be approved in periodic estimates of Owner's representative and be paid by Owner to Purchaser. Purchaser at his option and until he shall receive final payment may retain the same percent of each estimate as Owner retains from Purchaser and, if Supplier is in default of any terms or conditions hereof, Purchaser may retain any and all sums otherwise due Supplier until such default has been rectified. Final payment shall be made after Supplier has satisfied Purchaser of its compliance with all the terms and conditions hereof, and if so satisfied, twenty days after Purchaser has received final payment from Owner. Invoices received after the 25th of the month will be included in the following month's billing.
15. **Assignment:** Supplier may not assign or transfer this P.O. or any part hereof without the prior written consent of Purchaser. Supplier will reimburse Purchaser for any legal or other expenses incurred while enforcing its rights under this P.O.
16. **Operation and Maintenance Instructions:** Supplier shall provide the required number of complete copies of operation and maintenance instructions and parts lists as specified in the Contract Documents prior to payment in excess of 50% of the agreed P.O. price. Failure to comply with this requirement will be considered just cause for withholding payment of invoice.
17. **Agreement to Terms:** Supplier stipulates and agrees that if Supplier supplies materials for the Project, Supplier accepts all terms and conditions of this Purchase Order, even if Supplier does not sign this Agreement.