



## **Terms and Conditions Purchase Orders**

1. As more fully described in the General Terms and Conditions below, all equipment and work under this purchase order shall be in strict conformance with all contract documents, including but not limited to the project specifications, plans, drawings, addenda's, general supplementary and special conditions.
2. All items supplied under this purchase order to bear U.L. label and comply with all local inspection authority requirements.
3. IQ SUPPLY SOLUTIONS Purchase Order # and Job # must appear on all cartons, reels, bundles, packing lists, and invoices. All shipments must contain an itemized packing list.
4. Submit within one week (12) sets of detailed shop drawings, catalog cuts, and engineering data for approval before proceeding with work.
5. Provide O & M Manuals as required.
6. Hold for release pending approval.
7. A retainage of ten (10%) per cent will be withheld on this purchase order/sub-contract and released at the same rate as the owner releases retainage.
8. All equipment to have identification plates in accordance with specifications.
9. It is agreed that this order includes all equipment necessary to complete the work indicated in the contract documents and the following is not to be construed as a complete bill of material.
10. All work is to be done in strict conformance to all OSHA regulations.
11. Seller agrees that it will provide an insurance certificate as required by the contract documents within one week of the issuance of this PO.

## **Purchase Order**

### **Standard Terms and Conditions**

From the date of Seller's receipt hereof, any purchase order ("Purchase Order") submitted by Buyer to Seller shall be deemed an offer to purchase under the terms and conditions set forth herein. The items identified in the Purchase Order, with all accompanying materials, components, software, programming, and parts are considered the "Goods" hereunder.

### **ARTICLE 1: TERMS OF ACCEPTANCE**



1.1 The terms and conditions contained herein supersede all other terms and conditions and all other previous commitments, verbal or written. Seller's written acknowledgement of this Purchase Order or the initiation of performance by Seller shall constitute acceptance of this Purchase Order. Acceptance by Seller is limited exclusively to the terms and conditions contained in this document and any documents expressly incorporated by Buyer. Reference to a quote or proposal by Seller is NOT an incorporation or adoption of Seller's terms and conditions. No terms or conditions stated by Seller, either verbally or in any invoice, quote, proposal, submittal, electronic communication, or other document proposing to contract with Buyer or acknowledging or otherwise accepting this Purchase Order shall be binding upon Buyer unless specific terms are identified and agreed to by Buyer in writing. For the avoidance of doubt, signature by Buyer's representative(s) to acknowledge delivery when delivery is made, does not constitute acceptance of any Seller's terms that may be contained on such documents of Seller's that Buyer's representative signs.

1.2 Provisions in any prime contract between Buyer and an owner or general contractor (including but not limited to plans, drawings, or specifications) ("Prime Contract") that describe the type of goods that Buyer is to provide are expressly incorporated into this Purchase Order and are binding on Seller.

## ARTICLE 2: SHIPMENTS

2.1 Seller shall ship Goods via the method specified by Buyer. Seller acknowledges that regardless of the method of shipment, Seller shall be responsible for the timely delivery of Goods and agrees to use commercially reasonable efforts to avoid delays in shipment. Time is of the essence in performing under this Purchase Order. Seller agrees to furnish prompt written notice to Buyer of all projected or actual shipping delays. Said notice shall state the reasons for the delay and the actions undertaken by Seller to avoid and/or limit such projected or actual delay. Acceptance by Buyer of late performance hereunder shall not constitute a waiver of this provision.

2.2 If Seller's shipper delivers Goods prior to the authorized time for delivery and Buyer determines that it cannot accommodate receipt at the Jobsite, Seller shall store the Goods at a bonded warehouse and re-deliver the Goods in a timely manner, all at Seller's costs.



2.3 Seller shall be responsible for appropriate packing and protection of the Goods to adequately assure safe transit to the destination, and further to assure safe unloading practices at the shipment destination. No charge for packing, loading, protecting or shipping will be allowed unless expressly agreed to by Buyer. Further, Buyer reserves the right to refuse any load being transported that does not, in Buyer's sole opinion, meet standards of best practices for loading and unloading of material.

2.4 Seller guarantees that any shipment will be transported in accordance with local, state, federal and OSHA standards.

#### ARTICLE 3: PAYMENT

3.1 Seller shall submit properly documented invoices for payment after delivery of the Goods. Unless otherwise agreed to in writing, payment terms shall be forty-five (45) calendar days after Buyer's receipt of a properly documented invoice. Buyer shall not pay or be liable for any late charges of any sort or kind. Buyer's obligation to pay Seller for acceptance of conforming Goods shall be expressly conditioned upon receipt by Buyer of payment from an owner or general contractor with respect to the Goods. Seller agrees to assume the risk that if Buyer is not paid by an owner or general contractor with respect to the Goods that Seller will not have recourse against Buyer.

3.2 All invoices must be itemized and identified with the Purchase Order number and with specific Purchase Order item numbers, freight, taxes and other similar charges. Buyer is not responsible for any federal excise, state, or local sales taxes or custom duties not so reflected.

3.3 Payment will be made by Buyer only for Goods accepted and that conform to the requirements of the Purchase Order. If retainage is to be withheld from payments for Goods, it will be reflected on the first page of the Purchase Order.

3.4 If requested by Buyer, Seller agrees to furnish lien waivers and acceptable proof of payment for any associated labor or material costs as a condition of Buyer's payment obligation.

#### ARTICLE 4: CHANGES

Buyer may make changes to specifications, drawings, or other documents defining the scope of this Purchase Order. If any such change shall cause an increase or decrease in the price set forth in the Purchase Order, or in the time required for performance, or to any other provision of this



Purchase Order, an equitable adjustment will be negotiated in good faith. Seller shall continue to proceed with the Purchase Order as changed while any adjustments to price or other Purchase Order provisions are being negotiated. If no agreement can be reached, Buyer will proceed with the adjustments as requested by Seller and pursue any claims against Buyer per Article 13. Modifications to the types or quantities of Goods sold are subject to approval by an owner or general contractor and must be in writing.

#### ARTICLE 5: TITLE AND RISK OF LOSS

Title to the Goods shall pass to Buyer upon Buyer's acknowledged receipt of Goods at the Jobsite, but upon rejection or revocation of acceptance, title and risk of loss reverts to Seller. Risk of loss or of damage to Goods shall remain with Seller until the delivery of the Goods to the possession of Buyer at the destination specified by Buyer.

#### ARTICLE 6: TERMINATION FOR CONVENIENCE

6.1 Buyer may terminate this Purchase Order - in whole or in part - at any time for Buyer's convenience, and Buyer will reimburse the Seller for only those reasonable, substantiated, and necessary costs incurred directly in the performance of this Purchase Order to the date of termination.

6.2 All finished Goods, raw materials, and work in process that relates to this Purchase Order that has been purchased by Buyer shall become the property of Buyer upon payment following a termination for convenience.

6.3 Buyer shall have the right to return any or all Goods under this Purchase Order to Seller for which payment has not previously been made. Buyer's sole liability resulting from such return shall be the cost of shipping or delivering such Goods to Seller (unless such Goods are rejected for non-conformance or for late delivery, which will result in Seller being responsible for shipping or delivery costs).

6.4 Buyer shall not be liable for restocking fees under this Purchase Order no matter how the same was caused.

#### ARTICLE 7: TERMINATION FOR CAUSE

7.1 If Seller delays shipment of the Goods covered by this Purchase Order, fails to satisfactorily respond to Buyer's request for delivery assurances, repudiates this Purchase Order, or



otherwise materially breaches any other provision, or in the event of any proceeding by or against Seller in bankruptcy or insolvency or for appointment of a receiver or trustee or an assignment for the benefit of creditors, Buyer may, in addition to any other right or remedy provided herein or by law, terminate all or any part of this Purchase Order without incurring any liability on account of such termination.

7.2 In the event that Buyer terminates this Purchase Order in whole or in part for cause, Buyer may purchase from others, upon such terms and in such manner as Buyer may deem appropriate, similar goods to those that Seller has not properly provided. Seller shall be liable to Buyer for any direct excess costs incurred by Buyer in procuring substitute goods, plus reasonable incidental and consequential damages arising from Seller's breach of contract.

7.3 Any unearned advance payments made to Seller by Buyer shall be returned to Buyer promptly following Seller's receipt of notice of termination pursuant to Articles 6 or 7.

#### ARTICLE 8: REGULATORY COMPLIANCE

Seller represents that all Goods delivered to Buyer shall be manufactured and sold in compliance with all applicable federal, state and municipal laws, rules, codes and regulations. In the event the Goods do not conform to the standards, codes and/or regulations of any applicable law or Buyer's specifications, Buyer may return the Goods for either correction or replacement at Seller's expense. Seller shall be solely responsible for (and shall indemnify and hold harmless Buyer from) any fines or other liability assessed against Buyer resulting from any allegation that the Goods do not comply with applicable laws, codes, rules, and regulations.

#### ARTICLE 9: Buyer's RIGHT TO INSPECT and TERMS OF ACCEPTANCE

9.1 Buyer or Buyer's representative shall have the right to inspect and test all Goods to the extent practicable and at all times and places, including the Seller's premises, subject to Buyer's giving reasonable advance notice to Seller. Buyer's right to inspect and test the Goods shall extend through the manufacturing process and the time of shipment.

9.2 Buyer's inspection or participation in any tests (or the failure of Buyer to inspect or test) and payment by Buyer shall not act to relieve Seller of any of its obligations to conform to all of the requirements under this Purchase Order or impair Buyer's right to reject or revoke acceptance of non-conforming Goods.



9.3 Buyer may reject Goods that do not conform to Purchase Order within a reasonable time after delivery, which time shall not be less than five (5) days after receipt at the Jobsite. Additionally, Buyer may revoke acceptance of Goods as provided by applicable law and additionally, in those instances where Buyer cannot determine the conformity of the Goods without successfully operating at the Jobsite any system that incorporates the Goods, the right of revocation extends to a reasonable period (not greater than five days) after such initial system operation.

#### ARTICLE 10: WARRANTIES

10.1 In addition to warranties provided by law, Seller expressly warrants that all Goods will be free from defects in materials and workmanship and all Goods will conform strictly to specifications, drawings, and approved samples, if any, and to be new and of appropriate industrial or commercial grade, and to meet or exceed all performance criteria set forth in the Purchase Order and related documents. Seller further warrants that Seller has good title free and clear of all liens, claims, security interests or encumbrances to all Goods furnished under this Purchase Order. All warranties shall run to the benefit of Buyer, its successors, assigns, owners, and Buyer's customers. All warranties shall survive inspection, testing, acceptance, termination, and payment by Buyer. In the event of a breach of this section, Buyer may either return non-conforming Goods for credit or require prompt correction, repair, or replacement of the defective or nonconforming Goods. All costs, including shipping, travel, removal, and installation costs incurred in connection with the Goods to be replaced or repaired shall be borne by Seller.

10.2 All Seller inspections, service, repairs, or corrective work resulting from defective or nonconforming Goods, or the replacement thereof shall be performed by Seller promptly and at the Seller's expense and at the convenience of Buyer and/or Buyer's customers.

10.3 Buyer may, at Seller's expense, repair defects in Goods or procure replacement Goods if Seller fails to promptly proceed with repair, correction, or replacement of defective Goods. Buyer shall be entitled to deduct all cost for the foregoing repairs, corrections, or replacement from any amounts owed to Seller under this or other open Purchase Orders. If the cost to repair such defects exceeds the remaining balance or amount owed to Seller under the Purchase Order, Seller shall promptly pay Buyer for the difference.



10.4 Buyer's inspection of Goods shall not relieve Seller of any of its responsibilities under this Purchase Order nor shall same relieve Seller of its obligation to repair, correct, or replace defective Goods as set forth in this Article.

#### ARTICLE 11: DURATION OF WARRANTIES

11.1 Seller's warranties shall extend to the later of: eighteen (18) months from the date of Buyer's receipt of the Goods or twelve (12) months from date of installation of the Goods at the Jobsite ("Warranty Period"). If the Prime Contract provides for a longer warranty period applicable to the Goods, the Seller's warranty period shall be extended to the duration required in the Prime Contract.

11.2 All Goods repaired, corrected, or replaced under the provisions of Article 10.0 shall be subject to the same warranty provisions for the remainder of the unexpired original Warranty Period.

#### ARTICLE 12: INDEMNIFICATION

12.1 SELLER SHALL BE RESPONSIBLE FOR, INDEMNIFY, AND DEFEND BUYER AND BUYER'S CUSTOMERS AGAINST ALL LOSSES, CLAIMS, EXPENSES, AND DAMAGES, EITHER TO PERSON OR PROPERTY (INCLUDING THE LOSS OF USE THEREOF) OR FROM DEATH OF ANY PERSONS, WHICH RESULT FROM OR ARISE OUT OF (i) ANY ACT OR OMISSION ON THE PART OF THE SELLER, ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS OR (ii) ANY DEFECTS IN OR STRICT LIABILITY ATTACHING TO THE GOODS. SELLER SHALL AT ALL TIMES MAINTAIN SUFFICIENT LIABILITY, PROPERTY DAMAGE, AND EMPLOYEE LIABILITY INSURANCE TO PROTECT BUYER AND BUYER'S CUSTOMERS FROM LIABILITY AND SHALL SUPPLY, UPON REQUEST OF BUYER, CERTIFICATES SATISFACTORY TO BUYER EVIDENCING SUCH COVERAGE.

12.2 Under no circumstances shall Buyer be liable to Seller for consequential or indirect damages of any kind under this Purchase Order.

12.3 Seller shall indemnify and defend Buyer and Buyer's customers and hold them harmless from and against all liability, loss, damage, and expense, including actual counsel fees, resulting from any actual or claimed trademark, patent, or copyright infringement with respect to any part of the Goods or their use, and such obligation shall survive acceptance of the Goods and payment therefore by Buyer. If by virtue of a patent, trademark, or copyright infringement suit,



an injunction is issued against Seller, Buyer, or Buyer's customers that prohibits or limits the use of any Goods, Seller shall, at Buyer's request, either a) immediately supply Buyer and/or Buyer's customers with non-infringing replacement Goods of similar kind and quality at no additional cost or b) procure for Buyer and/or Buyer's customers a license to use infringing Goods at no additional cost to Buyer and/or Buyer's customers, or c) modify the infringing Goods to make them substantially equal but non-infringing, all at no additional cost to Buyer and/or Buyer's customers.

12.4 If the Purchase Order is for the lease of goods, seller shall maintain property insurance covering damages to the goods while in buyer's possession, and release buyer from liability for accidental loss or damage to the Goods.

#### ARTICLE 13: DISPUTES AND APPLICABLE LAW

13.1 If claims or disputes arise between the parties, the complaining party shall provide prompt written notice of the nature of any claimed breach of contract or wrongful conduct by the other party. Notwithstanding any pending claims or disputes, Seller shall continue to fulfill its obligations under this Purchase Order, reserving any claims it may possess against Buyer.

13.2 If litigation or other alternative dispute resolution is necessary to enforce any terms of this Purchase Order, the prevailing party shall be entitled to recover all costs, expenses, and attorney's fees reasonably expended in enforcing this contract.

13.3 If the Prime Contract contains a non-judicial dispute resolution procedure, in any dispute between Buyer and any owner or general contractor regarding the Goods, the Seller agrees to any appropriate joinder as a party to the dispute-resolution procedures.

13.4 This Purchase Order shall be governed by and construed and interpreted according to the laws of the state where the Goods are delivered. Any disputes exclusively between Seller and Buyer shall be subject to litigation before a court of competent jurisdiction exclusively in the state and county where the Goods were delivered.

#### ARTICLE 14: ASSIGNMENT

Seller shall not assign this Purchase Order or any part thereof without the prior written consent of Buyer. Seller shall require that no assignee divulge any information concerning this Purchase Order except to those persons necessarily concerned with the transaction.



#### ARTICLE 15: WAIVER

15.1 Failure of Buyer to insist upon strict performance of any of the terms and conditions of this Purchase Order, or to exercise any right or privilege contained herein, or the waiver of any breach of the terms or conditions of this Purchase Order shall not be construed as thereafter waiving any such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

15.2 All rights and remedies provided to Buyer under the Purchase Order shall be cumulative and in addition to any further rights and remedies provided in law or equity, including but not limited to the Uniform Commercial Code.

#### ARTICLE 16: COMPLETE AGREEMENT

This Purchase Order contains the complete and entire agreement between the parties hereto and supersedes any previous communications, representations or agreements, whether verbal or written, with respect to the subject matter hereof. NO CHANGE, ADDITION, OR MODIFICATION OF ANY OF THE TERMS OR CONDITIONS HEREOF SHALL BE VALID OR BINDING ON EITHER PARTY UNLESS IN WRITING SIGNED BY AN OFFICER OR DESIGNATED REPRESENTATIVE OF BUYER.

#### ARTICLE 17: Confidentiality

Seller shall keep confidential and not disclose to any third party any of the following information which is not otherwise publicly available: (i) details about the project for which Goods are sold, (ii) any unique pricing arrangements provided to Buyer, and (iii) custom designs and processes developed for this Purchase Order. Seller shall take reasonable precautions to preserve the confidentiality of such information. Upon Buyer's request, at the termination of a Purchase Order or the completion of performance thereunder, Seller shall return to Buyer all project information provided in conjunction with a Purchase Order. Notwithstanding anything to the contrary elsewhere in this Purchase Order, in the event that this Purchase Order is for or includes Services and/or Work (either initially or by Change Order), the following additional terms and conditions shall apply:

#### ARTICLE 18: WORK



Work means Services, including construction, required by this Purchase Order and/or the Contract Documents, whether or not completed, and includes all Goods, services and labor necessary to fulfill Seller's obligations described in this Purchase Order and/or the Contract Documents (the "Work"). Seller shall deliver Work to the Jobsite, unless designated otherwise in this Purchase Order.

#### ARTICLE 19: SERVICES

Services means the providing of all obligations in this Purchase Order, including labor, by Seller at the Jobsite, and/or any other acts that endeavor to or succeed in providing the obligations of Seller under this Agreement at the Jobsite and/or for the Project (the "Services").

#### ARTICLE 20: CONTRACT TIME

The Contract Time is the duration between the issue date of the Purchase Order (or as designated otherwise by the Buyer) and the Delivery Date ("Date of Substantial Completion") listed in the Purchase Order.

20.1 Project Schedule Requirements: All Work/Services shall be delivered to Jobsite or as designated otherwise according to the relevant Project Schedule. Project Schedule shall be provided upon Seller's request. Prior to any deviation from the Project Schedule for the Seller's Work/Service, Seller must obtain Buyer's approval in writing to such change of the date designated in this Purchase Order.

20.2 Delivery of Submittals: On time submission of submittals by Seller to Buyer, is critical. (See "SUBMITTALS" below).

20.3 Material and/or equipment: For Goods including material and/or equipment (either incorporated or unincorporated) required for the Work, Seller shall meet the further requirements as are listed in the relevant Schedule Requirements.

20.4 Substantial Completion: Seller is advised that Delivery Date (the date the Owner is able to use the Project for its intended purpose, i.e., date of "Substantial Completion,") is firm and that time is of the essence for this Agreement. Seller shall perform Work/Services hereunder by the earlier of the date specified in this PO and the Project Schedule. Failure to complete Work/Services by the date specified under this PO shall constitute a material breach of this Agreement. If the Work and/or Services are not completed when specified, the Buyer shall have the right, after providing Seller 24 hours' written notice, to purchase said Work/Services



elsewhere, and Seller shall be responsible for any and all damages suffered by the Buyer by reason of Seller's failure to perform by the date of Substantial Completion specified. Should Seller receive information that the Substantial Completion date may not be met, it shall immediately give the Buyer written notice to this effect, specifying the reason for and the length of the delay.

#### ARTICLE 21: CONTRACT SUM

The amount of the Purchase Order is the Contract Sum.

#### ARTICLE 22: Final payment

Final Payment shall occur only after delivery to Buyer by Seller of: 1) Unconditional lien waiver(s) (or release(s), if applicable) for the full amount of the PO value (including all Buyer approved Change Orders); 2) delivery of Operating and Maintenance Manuals; and in addition to the foregoing, if requested by Buyer: 3) consent of surety, if any, to final payment; 4) an affidavit that payrolls, claims or invoices for materials and/or equipment and any other debts related to the Work/Service for which Owner might be liable or that a lien might be filed against Owner's property, have been paid or otherwise remedied; and 5) any other requirements by Owner or as required by the Contract Documents. Buyer's obligation to pay Seller for acceptance of conforming Goods shall be expressly conditioned upon receipt by Buyer of payment from an Owner or general contractor with respect to the Goods. Seller agrees to assume the risk that if Buyer is not paid by an Owner or general contractor with respect to the Goods that Seller will not have recourse against Buyer. Buyer's receipt of payment from Owner or general contractor with respect to the Goods is an express condition precedent to Buyer's obligation to pay Seller, and Seller expressly assumes the risk of non-payment by Owner or general contractor.

#### ARTICLE 23: RETENTION

Retention on this Purchase Order is as defined in the Contract Documents or as otherwise designated by the Buyer.

#### ARTICLE 24: CHANGES



A Change Order is a written document acknowledged by the Buyer and Seller designating agreement regarding changes to the: 1) Work and/or Services; 2) time for performance of the Work and/or Services; and/or 3) Contract Sum. In the event that Seller and Buyer cannot reach agreement on an issue of the Change Order prior to its adjustment into the Project, Seller shall proceed with the Change Order; the parties agree to use all good faith efforts to reach agreement and/or resolve all claims prior to Project closeout.

#### ARTICLE 25: SUBMITTALS

Shop drawing, product data, project data, samples, etc. (“Submittals”) shall be delivered to Jobsite, as instructed by the Buyer’s jobsite representative, unless designated otherwise in writing by Buyer. Seller shall deliver to Buyer’s jobsite representative, within five (5) working days from date of this Purchase Order (or as otherwise instructed in writing by Buyer’s jobsite representative), or as required in this Purchase Order and/or Contract Documents (and at no additional charge to Buyer) six (6) complete sets of each of the following:

25.1 Shop drawings: including (but not limited to) cut sheets, necessary notes, etc.

25.2 Product Data: product data describing the Goods and all pertinent technical information to allow their proper incorporation into the Project without causing delays.

25.3 Reports/Certification: all test reports/mill certifications, etc., required per the Contract Documents or required in this Purchase Order.

25.4 Operating & Maintenance Manuals: Operating and Maintenance Manuals (O&M Manuals), including pertinent data that communicates to user(s) how to properly operate and maintain the Goods; delivery of O&M Manuals shall be no later than the delivery date as stated in this Purchase Order or relevant Contract Documents or as agreed to in writing with Buyer.

25.5 Spare Parts List: list of all parts, (list shall designate all parts as either consumable or non-consumable).

#### ARTICLE 26: INSURANCE

Seller shall insure Buyer’s Goods and be liable for loss or damage DDP Jobsite (or in accordance with other designated INCO term as applicable). Seller shall maintain insurance limits as provided by the Contract Documents. Such policies shall be endorsed to provide Waiver of



Subrogation in favor of Buyer, and name Buyer and the Owner as Additional Insureds. Seller's insurance shall be primary and non-contributory to any insurance or self-insurance maintained by Buyer with respect to the performance of the Work in connection with this Purchase Order. All policies of insurance shall be with a company or companies acceptable to the Buyer. The Seller shall, upon request by the Buyer, provide the Company with a certified copy of the declaration page and a certificate of insurance and any endorsements required by this Agreement, demonstrating that proper coverage is in place.

#### ARTICLE 27: REPRESENTATIONS AND WARRANTIES

In addition to representations and warranties elsewhere in this Purchase Order, Seller represents and warrants that:

27.1 it possesses and shall at all times maintain all licenses and other governmental approvals required of it to perform the Work in the jurisdiction in which the Project is located.

27.2 the Work/Services (including but not limited to labor, incorporated/unincorporated Goods, reports, opinions, tests, etc.) furnished under this Purchase Order shall be in strict compliance with the Contract Documents or as described in this Purchase Order applicable to this Work/Service.

27.3 Seller, when required by law and/or by this Purchase Order or Contract Documents, shall provide the services of a competent currently licensed professional which shall comply with the requirements of the appropriate authorities having jurisdiction.

#### ARTICLE 28: ENVIRONMENTAL/HEALTH/SAFETY

Seller agrees to comply with all Environmental, Safety and Health (EHS) requirements of Buyer and with all applicable federal, state, county and local environmental laws of the jurisdiction where the Project is located. Buyer's EHS requirements may be reviewed by Seller at the Buyer's project field office at the Jobsite, or, upon request, Buyer shall provide Seller a copy of Buyer's applicable EHS requirements.