

CLEMENS CONSTRUCTION COMPANY, INC.

MASTER PURCHASE ORDER TERMS AND CONDITIONS

Purchaser: Clemens Construction Company, Inc. ("Clemens")

Vendor:

Date:

Intending to be legally bound, Clemens and Vendor hereby agree as follows:

- 1. Master Terms And Conditions.** These Master Purchase Order Terms and Conditions shall be applicable to and govern all labor, materials and work provided by Vendor under Purchase Orders hereafter issued by Clemens to Vendor. Capitalized terms used in these Master Purchase Order Terms and Conditions without definition shall have the respective meanings given to them in the applicable Purchase Order.
- 2. Applicable Law.** Clemens and Vendor agree that the Uniform Commercial Code as enacted in the Commonwealth of Pennsylvania ("UCC") shall apply to the transaction described in a Purchase Order. Each Purchase Order shall be governed by the substantive laws of the Commonwealth of Pennsylvania.
- 3. Acceptance.** Each Purchase Order shall constitute no more than Clemens' offer to purchase the Materials from Vendor in accordance with these Master Purchase Order Terms and Conditions and any additional terms and conditions expressly set forth or incorporated by the express reference on the Purchase Order (hereinafter collectively referred to as the "Terms and Conditions"), which when accepted by Vendor shall constitute a binding contract between the parties, **ACCEPTANCE OF SUCH OFFER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN AND THEREIN.** Any terms and conditions proposed by the Vendor in Vendor's quotation, invitation, acceptance, acknowledgement, invoice, transmittal, or any other document which are different from, conflict with, or add to the Terms and Conditions shall be deemed to materially alter the Terms and Conditions and are hereby objected to and rejected by Clemens. Acceptance of Clemens' offer shall occur upon the happening of any of the following events, but is not limited to these events: (a) receipt by Clemens of a copy of the Purchase Order signed by Vendor without alteration thereto, (b) receipt by Clemens of notification from Vendor that Vendor has commenced performance hereunder or that Vendor intends to deliver or ship the Materials to Clemens, or (c) any performance (partial or otherwise) by Vendor. Clemens may cancel a Purchase Order at time without liability to Vendor except Materials delivered to and accepted by Clemens.
- 4. Prices: Taxes.** The price stated in a Purchase Order for the Materials sold thereunder include all Federal, state and local taxes imposed upon or on account of such sale, unless otherwise indicated herein. Clemens shall receive the benefit of any price reduction by Vendor during the term hereof.
- 5. Delivery.** The time of delivery is of the essence. If a tender of conforming Materials is not made by the scheduled delivery date, Vendor shall have no right to make a later conforming tender. If Vendor in any way causes delay in the progress of Clemens' work or the Project, so as to cause any damage to Clemens or to cause any damages for which Clemens may become liable, Vendor shall be liable to Clemens therefor.
- 6. Transportation and Risk of Loss or Damage.** Transportation of Materials will be F.O.B. Destination. No transportation, freight or insurance shall be payable by Clemens. Risk of loss, regardless of cause and regardless of who pays transportation or freight costs shall be Vendor's responsibility until the Materials have been accepted by Clemens. Revocation of acceptance shall return risk of loss to Vendor.
- 7. Changes.** Clemens may, in writing , make changes to a Purchase Order . If such changes cause an increase or decrease in the cost of the Materials, or the time required for delivery, an equitable adjustment in the price shall be made.
- 8. Vendor's Warranties.** Vendor expressly warrants that all Materials purchased and delivered pursuant to a Purchase Order: (a) shall strictly conform in all respects with Clemens' requirements stated, incorporated or referenced in the Purchase Order; (b) shall strictly conform in all respects to any samples, drawings, specifications or other written documents presented to Clemens in connection with the sale of the Materials to Clemens; (c) shall be merchantable, of

new and best material, and fit for the purpose for which the Materials are used; (d) shall be free from all defects, including latent defects, in workmanship, material and design; and (e) shall be fit for any particular purpose communicated by Clemens to Vendor. In addition to the foregoing express warranties arising by operation of law. These warranties shall survive inspection, delivery, acceptance and payment, shall run to Clemens, its successors, assigns, customers and users of the Materials and shall not be deemed to be exclusive. Vendor shall be bound by any representation or undertaking made by any of its agents or employees with respect to specifications, quality, packaging, price or conditions of delivery of the Materials. By accepting a Purchase Order, Vendor ratifies any such representation or undertaking made by any of its agents or employees.

9. **Payment; Retainage.** Payments for Materials accepted by Clemens shall be based on 90% of the value of the approved requisition submitted by the 25th of each month, and Clemens' receipt of payment for the Materials from the owner of the Project for which the Materials are intended shall be a condition precedent to Clemens' obligation to make payment therefore to Vendor. Retainage will be withheld until Clemens receives retainage from the Project owner.

By accepting a Purchase Order, Vendor acknowledges and agrees that, prior to such acceptance, it has received a copy of the payment provisions contained in the contract between Clemens and the Project Owner (the "Prime Contract").

VENDOR ACKNOWLEDGES AND AGREES THAT IT HEREBY SPECIFICALLY WAIVES ALL OF ITS RIGHTS UNDER THE PENNSYLVANIA CONTRACTOR AND SUBCONTRACTOR PAYMENT ACT 73 P.S. 501 et. seq. (the "Act"), INCLUDING, WITHOUT LIMITATION, ANY RIGHT TO INTEREST, PENALTIES AND ATTORNEYS' FEES PROVIDED BY THE ACT.

10. **Vendor's Default.** Vendor shall be in default when Vendor fails to fully perform any of its obligations under the Terms and Conditions or under applicable law. A default or breach by Vendor relating to any portion or installment of its performance shall be deemed a breach of the whole. If Vendor is in default or otherwise in breach, Clemens shall be entitled to all remedies for a breach of contract set forth in the UCC and all other remedies available at law or in equity. None of the remedies available to Clemens hereunder may be limited.
11. **Indemnification.** Vendor assumes the entire responsibility and liability for, and agrees to indemnify, defend and hold harmless Clemens, its officers, agents, employees, successors, assigns, customers, and users of the Materials, from and against any and all losses, expenses (including, without limitation, reasonable attorney's and other professional fees), costs, damages, demands, liabilities, suits and claims in connection with or arising out of any actual or alleged bodily injury (including death) or damage or destruction to property (including loss of use) by whomsoever suffered, sustained or alleged to have been sustained by reason of: (a) any act, error or omission, whether negligent or not, Vendor or its agents, employees, suppliers, subcontractors and consultants, or (b) any defect, whether latent or patent, in the Materials, or (c) any failure of the Materials, to comply with any warranty of Vendor, whether caused in part by a party indemnified hereunder. Vendor shall maintain comprehensive general liability insurance with respective minimum limits of liability of \$2,000,000 per occurrence and workers' compensation insurance and employer's liability insurance in accordance with statutory requirements.
12. **Liens.** Vendor shall not file or maintain any liens (including mechanics' liens) or claims against the Materials or against the real property in which the Materials are installed, and Vendor hereby waives its right to file or maintain such a lien. As a condition precedent to payment hereunder, Vendor shall furnish all necessary releases, lien waivers, affidavits, and other documents which Clemens may require to keep the goods and the real property free from liens or claims. If requested by Clemens, Vendor shall execute and deliver to Clemens a release of liens at the time of final payment.
13. **Equal Employment Opportunity.** Vendor shall comply with The Civil Rights Acts of 1964 and 1991, The American with Disabilities Act of 1990, Executive Order 11246 of September 24, 1965 (including all amendments, updates, and modifications to such Executive Order), relevant orders of the Secretary of Labor (including the regulations set forth in 41 C.F.R. 60 and subparts thereof relating to employment of minorities, females, disabled workers, and disabled and Vietnam era veterans), and applicable state and local requirements, ordinances and laws regarding affirmative action and equal employment opportunities Vendor further agrees not to discriminate against any employee or applicant for employment because of race, religion, sex, age, national origin, handicap, or disabled veterans or veterans of the Vietnam era.
14. **Dispute Resolution.** All disputes, claims or controversies arising in connection with a Purchase Order, these Master Purchase Order Terms and Conditions or the Materials shall be resolved through arbitration, unless the applicable Prime Contact does not permit Clemens to resolve disputes with the Project owner through arbitration, in which case Clemens may elect to resolve a dispute with Vendor relating to such Project through litigation. In the event of arbitration, the arbitration shall be conducted in accordance with the construction industry rules in effect of the American Arbitration Association, and judgment upon the award rendered in arbitration may be entered in any court having jurisdiction. In no event shall Vendor delay, disrupt or stop manufacture or delivery of Materials as a result of a dispute, claim or controversy relating to a Purchase Order.

15. **Miscellaneous:**

Vendor shall not assign, delegate or subcontract any of its rights or obligations hereunder including, without limitation, its right to payment, without the prior written approval of Clemens. Any such assignment, delegation or subcontract without Clemens' prior written consent shall be void.

In any event that any provision of a Purchase Order or these Master Purchase Order Terms and Conditions is declared invalid by any tribunal or law, the remainder of the provisions shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law.

No claim or right arising out of a breach of a Purchase Order or these Master Purchase Order Terms and Conditions by Vendor may be discharged in whole or in part by a waiver of the claim or right, unless the waiver is in writing signed by an authorized representative of Clemens. Clemens' waiver or acceptance of any breach by Vendor shall not constitute a waiver of or an excuse for nonperformance as to any other provision nor as to any prior or subsequent breach of the same provision.

When accepted, a Purchase Order and these Master Purchase Order Terms and Conditions will constitute the complete and exclusive statement of the terms of the contract between the parties hereto, are intended as a final expression of the terms of such contract, and will supersede all prior and contemporaneous agreements, inducements or conditions relating thereto, express or implied, oral or written. However, Vendor will be bound by any prior express warranties made by Vendor or Vendor's agents and employees. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term herein. Clemens' acceptance or acquiescence in a course of performance rendered by Vendor hereunder shall not be relevant to determine the meaning of this contract even though Clemens has knowledge of the nature of the performance and opportunity for objection.

No modification of a Purchase Order or these Master Purchase Order Terms and Conditions shall be effective unless accepted in a written Change Order signed by an authorized representative of Clemens.

Purchaser:

Vendor:

Clemens Construction Company, Inc.

By: _____

By: _____

Name/Title: _____

Name/Title: _____

Date: _____

Date: _____