

Section 2 – General Terms and Conditions

1. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "Contracts & Purchasing Representative" means the person authorized by Buyer's cognizant procurement organization to administer and/or execute this Purchase Order. (b) "PO" or "Purchase Order" or "Order" as used in any document constituting a part of this agreement shall mean this Purchase Order.
- (c) "Parties" means Buyer and Seller as identified on the signature page of this Purchase Order.
- (d) "Article(s)" means all required materials, supplies, goods and services constituting the subject matter of this Purchase Order.

2. ENTIRE AGREEMENT

Seller, by signing this Purchase Order (PO), delivering the supplies, or performing the requirements indicated herein agrees to comply with all the terms and conditions and all specifications and other documents that this Purchase Order incorporates by reference or attachment. Buyer hereby objects to any terms and conditions contained in any acknowledgement of this Agreement that are different from or in addition to those mentioned in this document. Failure of Buyer to enforce any of the provisions of this Agreement shall not be construed as evidence to interpret the requirements of this Agreement, nor a waiver of any requirement, nor a waiver of the right of buyer to enforce each and every provision. All rights and obligations shall survive final performance of this Order.

3. NOTICE OF BUY AMERICAN ACT REQUIREMENTS – CONSTRUCTION MATERIALS AND SUPPLIES

In compliance with the Buy American Act (41 U.S.C. 10a-10d) and Buyer's prime contract with the Client, unless specifically stated otherwise in this Purchase Order only domestic supplies, construction materials, or domestic "end products" as defined in FAR 52.225-1 and/or FAR 52.225-9 will be accepted by the Buyer.

4. PACKING AND SHIPMENT

Unless otherwise specified in this Purchase Order all Articles shall be delivered f.o.b. destination. The Buyer's Order number and part numbers must be plainly marked on all invoices, packages, bills of lading and shipping orders. Shipping memos or packing lists must accompany Articles. The Buyer's count or weight shall be final and conclusive on shipments not accompanied by shipping memos or packing lists. Unless otherwise specified, all Articles are to be packed and shipped in accordance with best commercial practices.

Notwithstanding anything to the contrary herein or contained within this Purchase Order, the risk of loss of or damage to Articles which fail to conform to this Purchase Order shall remain with Seller until cure or acceptance.

5. OVERSHIPMENTS AND REJECTED MATERIAL - RETURN TO SELLER

The Buyer's needs are for the quantities of Articles specified within this Purchase Order. Articles delivered in excess of the quantity ordered result in substantial administrative expense to the Buyer. Therefore, Articles delivered under this Purchase Order in excess of the quantity specified may be retained by the Buyer at no additional cost. The Buyer is under no obligation hereunder to notify Seller of any over shipments. Seller shall be liable for handling charges and return shipment costs for: (a) any excess quantities shipped by Seller and returned by the Buyer, including returns due to quantities shipped to incorrect destinations, and (b) for any Articles which are rejected and returned to Seller for non-compliance with the specified requirements. The Buyer shall have, in addition, any other rights and remedies provided by law, equity or under this Purchase Order, the right to a set off against this Purchase Order.

6. DELIVERY

The Parties hereby agree to the delivery dates established per this Purchase Order. Buyer may at its sole discretion agree to accept deliveries after the date established herein for delivery has passed. Buyer may in such an instance hold Seller responsible for all costs occasioned to the Buyer as a result of late delivery which may include any additional cost to the Buyer resulting from expediting shipment. Any such acceptance of late deliveries shall be at such reduction in price as is equitable under the circumstances unless such late delivery arises out of causes beyond the control and without the fault or negligence of Seller. Acceptance of late deliveries shall not relieve Seller of the obligation to make future deliveries in accordance with the delivery schedule established herein.

7. PAYMENT

Seller shall be paid the prices set forth in this Purchase Order less deductions, if any, after delivery and acceptance by the Buyer and upon the submission of proper invoices according to the terms expressly stated in this Purchase Order. Payment will be made on partial deliveries accepted by the Buyer, according to terms stated in this Purchase Order. If no special payment terms are stated herein, payment terms shall be Net 30 days. Seller shall submit invoices within 30 days of delivery and acceptance to ap@specproenv.com. In case of conflict between unit prices and total price, unit prices shall control. Invoices are not to be enclosed with Articles or submitted to individuals or other addresses. Any payments made for Articles delivered prior to final acceptance of the Articles shall not constitute final acceptance of the Articles. Delays in receiving invoices as well as errors and omissions thereon will be considered just cause for withholding payment without losing discount privileges. Unless otherwise agreed, invoices covering Articles shipped in advance of specified delivery dates will not be paid until their normal maturity after the date specified for delivery.

8. CHANGES

The Buyer may at any time prior to final delivery under this Purchase Order by notice in accordance with Clause 28, make changes within the general scope hereof in any one or more of the following: (1) drawings, designs or specifications where the Articles to be furnished are to be specially manufactured for the Buyer in accordance therewith; (2) method of shipment or packing; (3) the place of delivery; (4) description of services to be performed, (5) time of performance of the services (e.g., hours of day, day of the week and place of performance of the services, and (6) the delivery schedule.

If any such change causes an increase or decrease in the cost or time required for performance of this Purchase Order, an equitable adjustment may be made in the price or delivery schedule or both, and this Purchase Order shall be modified accordingly. Any claim by the Seller for adjustment under this clause must be asserted within fifteen (15) days from the date of notification of the change, provided, however, that the Buyer, if the Buyer decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment of the Purchase Order. Failure to agree to an adjustment shall not excuse the Seller from proceeding with the Purchase Order as changed. If the Purchase Order is placed under a Government prime contract, the cost principles set forth in Federal Acquisition Regulation (FAR), Part 31, or the Department of Defense (DoD) FAR Supplement (DFARS) Part 231 shall be applicable in the determination and negotiation of any equitable adjustment of price hereunder.

Whether made pursuant to this clause or by mutual agreement, changes shall not be binding upon the Seller unless directed in writing by a member of the Buyer's Contracts & Purchasing Department. The issuance of information, advice, approval, or instructions by the Buyer's technical personnel or other representative shall not affect the Buyer's and Seller's rights and obligations hereunder unless the same is in writing and signed by a member of the Buyer's Contracts & Purchasing Department and it is expressly stated therein that it constitutes an amendment to this Purchase Order.

9. INSPECTION

All Articles called for hereunder or portions thereof shall be subject to inspection and test by the Buyer and authorized Government representatives, if applicable, at any point during the manufacture thereof and in any event prior to acceptance. Final inspection and acceptance shall be after delivery in accordance with this Purchase Order. If any inspection or test is made on the premises of Seller, Seller shall provide reasonable facilities and assistance for the safety and convenience of inspection personnel. The Buyer shall have the right to reject Articles found upon inspection not to conform to the Purchase Order, to require their correction (either in place or at Seller's plant, at the Buyer's option), or to accept nonconforming Articles at a reduction in price which is equitable under the circumstances. If, as a result of sampling inspection, any portion of a lot or shipment of like or similar items is found not to be conforming to the Purchase Order, the Buyer may reject and return the entire shipment or lot without further inspection, or, at its option, complete inspection of all items in the shipment or lot, reject and return any or all nonconforming units (or accept them at a reduced price) and charge Seller the cost of such inspection. Items once rejected shall not thereafter be tendered for acceptance unless the former rejection is made known. The Buyer's acceptance of any nonconforming Articles shall not constitute a waiver of specification requirements for any additional Articles required to be delivered hereunder.

The Buyer shall not be required to inspect or test Articles hereunder. It shall be the Seller's responsibility to adequately test and inspect the Articles to be tendered for acceptance to assure that such Articles are in strict conformance with all the requirements of this Purchase Order. By such tender Seller assures the Buyer that such Articles offered so comply. Except as otherwise provided in this Purchase Order, final acceptance shall be conclusive except as regards latent defects, fraud or such gross mistakes as amount to fraud.

10. WARRANTIES

Unless otherwise stated herein:

- (a) The Seller warrants that all Articles to be delivered hereunder shall be free from defect in workmanship and material and shall conform to the specification. If the Buyer shall give the Seller notice of any defect or nonconformity (whether latent or patent) within one year from the date of delivery of any Articles affected thereby, the Seller shall at no cost to the Buyer and with all possible speed, repair or replace Articles thereof. Warranties shall then continue for an additional one-year period as to the repaired or replaced Articles. Warranties shall survive the Buyer's inspection, delivery, acceptance or payment by the Buyer and shall together with Seller's service guarantees, if any, run to the Buyer and its customer.
- (b) If applicable, Seller warrants that each and every chemical substance delivered hereunder shall, at the time of sale, transfer, or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8 of the Toxic Substances Control Act (Title 15 USC Para. 2601, et. seq.).
- (c) The above warranties shall be in addition to any other rights and warranties available to the Buyer.

11. TERMINATION

In accordance with the clause entitled "Notices", Buyer may terminate at any time for its convenience or terminate for Seller's breach, all or any part of this Purchase Order. If this Purchase Order is terminated for Seller's breach or if Seller is in breach of this Purchase Order when it is terminated for convenience, Seller shall have no claim against Buyer for any costs incurred or any profit with respect to the terminated or cancelled portion of this Purchase Order. If this Purchase Order is otherwise terminated by Buyer, Seller shall be paid an equitable amount to cover the effort actually expended by Seller plus a reasonable profit thereon; provided, however that no amount shall be paid for any anticipatory profits and the total amount shall not exceed the prices contained within this Purchase Order for the Articles terminated. In addition to Buyer's right to cancel at any time for Seller's breach of any of the provisions of this Purchase Order, including the failure to meet their delivery schedule, all or any portion of this Purchase Order may be cancelled by Buyer, if Buyer's written request for assurances. Also, in addition to Buyer's right to cancel, all or a portion of this Purchase Order may be cancelled upon the happening of Seller, voluntarily or involuntarily, filing petition under the Bankruptcy Laws of the United States, the execution of an assignment for the benefit of creditors, a calling of a meeting of creditors, an appointment of a dissolution or liquidation agent or committee, or an application for the appointment of a receiver. The rights and remedies provided herein shall not be exclusive, but are cumulative and in addition to any other rights and remedies provided by law or covered under this Purchase Order.

12. BUYER PROPERTY

Unless otherwise expressly agreed in writing, all material, tooling, designs, data, documents and any other property furnished to the Seller by the Buyer or paid for by the Buyer in connection with this Purchase Order, (1) shall be and remain the property of the Buyer; (2) shall be subject to delivery to the Buyer upon request; (3) shall not without the Buyer's written permission be used for or disclosed to anyone other than the Buyer; (4) shall be held at the Seller's risk; and (5) shall be kept insured by the Seller at the Seller's expense while in its custody or control in an amount equal to replacement cost thereof, with loss payable to the Buyer. Copies of policies or certificates of such insurance shall be furnished to the Buyer upon request.

13. INDEMNIFICATION

(a) Seller agrees to indemnify, hold harmless and defend Buyer, its agents, employees, officers and directors from any and all costs and expenses, including attorneys' fees, which Buyer may pay or become obligated to pay, on account of any, all and every demand or claim or assertion of liability arising, or alleged to have arisen, out of (1) Seller's breach of any expressed or implied warranty; (2) Seller's default; (3) the negligent or deliberate acts and/or omissions of Seller or its agents, employees, officers, and directors; (4) Seller's or Seller's Sellers' liabilities for non-compliance with the provisions of Clauses 18 and 19; (5) any and all actions or proceedings charging infringement of any patent, trademark, copyright, or mask work by reason of sale or use of any Articles furnished hereunder; (6) bodily injury to or property damage of any person including Seller's or Seller's Sellers' employees, arising out of performance of any work hereunder, including Seller's use of premises or equipment.

(b) In the event the liability of Seller shall arise by reason of the negligence of Buyer or Buyer's agents, employees, officers, and directors, or by reason of specific compliance with detailed instructions of Buyer, Seller shall not be liable under the provisions of this clause except to the extent of the Seller's negligence. Buyer agrees to provide Seller with timely notice of any potential claim covered by this clause.

14. CONFIDENTIALITY

Seller shall keep confidential all information, drawings, specifications, or data, and return to the Buyer upon request all documents furnished by the Buyer and marked proprietary, and shall not divulge or use such information, drawings, specification, or data for the benefit of any other party except as required for the efficient performance of this Purchase Order. Seller shall not make copies or permit copies to be made without the prior written consent of the Buyer. Seller shall thereafter make no further use, either directly or indirectly, or any such data or any information derived there from without obtaining the Buyer's written consent; provided, however, the foregoing limitation shall not apply to items produced for direct sale to the U.S. Government in the event that the U.S. Government has the right to authorize the use of the Buyer's information, drawings, specifications or data for such purpose and the Seller so notifies the Buyer in writing.

15. GRATUITIES/KICKBACKS

No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by Seller, to any employee of Buyer with a view toward securing favorable treatment as a supplier.

By accepting this Purchase Order issued herein, Seller certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph(c)(1) of FAR 52.203-7 shall not apply.

16. PATENTS AND DATA

- (a) Patent Rights: Seller agrees to promptly disclose and upon request to assign to Buyer each invention conceived or first actually reduced to practice during the performance of this Purchase Order.

Section 2 – General Terms and Conditions

(b) **Rights in Data:** Seller hereby grants to Buyer a royalty-free non-exclusive transferable and irrevocable license throughout the world to use, duplicate, sublicense or disclose for any purpose whatsoever, and to authorize others to do so, all data (which term includes but is not limited to writings, recordings, pictorial reproductions, drawings, computer programs, or other graphic representations and works of any similar nature whether or not copyrighted) required to be or actually delivered to Buyer under this Purchase Order.

17. ASSIGNMENT

Seller may not assign this Purchase Order nor any interest herein, in whole or in part, without the prior written consent of Buyer. However, Seller may assign rights to be paid amounts due to a financing institution if buyer is promptly furnished a written notice and a signed copy of such assignment. Payments to assignee shall be subject to set off or recoupment for any present or future claims of buyer against Seller. Seller shall perform all services hereunder with its own personnel and shall not enter into a purchase order for any portion of the work without the prior written consent of the buyer. If assigned, all covenants, stipulations and promises of this Purchase Order shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.

18. ADVERTISEMENTS

Seller shall not advertise or make public in any manner the existence of this Purchase Order or any contents hereof without the Buyer's prior written consent.

19. COMPLIANCE WITH LAWS

Seller represents that it has and will continue during the performance of this Purchase Order to comply with the provisions of all applicable federal, state and local laws and regulations. Seller agrees to furnish the Buyer upon request, satisfactory evidence of compliance.

20. EXPORT CONTROLS

- (a) Seller agrees to comply with all U.S. export control laws and regulations. Without limiting the foregoing, Seller agrees that it will not transfer any export-controlled item, data or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of export authorization.
- (b) Seller agrees to notify Buyer if any Articles or service to be delivered under each Purchase Order is restricted by export control laws or regulations.
- (c) Seller shall immediately notify the Buyer's Contracts & Purchasing Representative if Seller is listed in the Denied Parties List or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

21. DISPUTES

If a decision relating to the Prime Contract is rendered by the Client and the decision relates to this Purchase Order, said decision, if binding upon the Buyer, shall also be binding upon the Seller with respect to the matter. Upon written request by Seller Buyer shall file an appeal of the decision. Any decision on appeal, if binding upon the Buyer, shall be binding upon the Seller. Seller shall assist Buyer as necessary to diligently pursue all claims. Seller shall proceed as required by the Purchase Order documents during any pending claims and/or appeals. If as a result of any decision or judgment which is binding upon the Seller and the Buyer, the Buyer is unable to obtain reimbursement under the Prime Contract for, or is required to refund or credit to the Buyer's Client any amount with respect to any item, costs, or fee for which the Buyer has paid the Seller the Seller shall, on demand, promptly repay such amount to the Buyer.

The Buyer and Seller agree to attempt to resolve any dispute by direct negotiations and in good faith. If these negotiations prove unsuccessful, the following rules shall apply:

Seller acknowledges that the Prime Contract may include a disputes resolution clause pursuant to which Buyer may be limited to certain dispute resolution procedures, such as arbitration or administrative proceedings, in the event of a dispute relating to the Prime Contract. In the event that a dispute between Buyer and Seller relates to a dispute between Buyer and its Client, the Parties agree to be bound by the dispute resolutions procedures in the Prime Contract with respect to disputes under this Purchase Order in the same manner that Buyer is bound under the Prime Contract. Seller consents to join in any proceedings between Buyer and Client upon the request of Buyer.

The Parties agree that this Purchase Order, and the performance or breach thereof, shall be governed and construed in accordance with the substantive and procedural laws of the State of Tennessee, United States of America except for FAR and FAR supplement clauses, if applicable, which shall be determined in accordance with Federal law.

Any dispute, controversy, claim or difference arising out of or relating to, or resulting from this Purchase Order, its application or interpretation, or a breach thereof, which cannot be settled amicably by the Parties, shall be resolved definitively and exclusively by arbitration under the Rules of Procedure of the American Arbitration Association (the "Rules") then prevailing, which arbitration shall be held in Knoxville, Tennessee, United States of America. Arbitration shall be by a single arbitrator within thirty (30) calendar days after demand for arbitration, the arbitrator being chosen in accordance with the Rules. It is agreed that all documentary submissions, presentations and proceedings shall be in the English language. The decision of the arbitrator shall be final and binding on the Parties, and judgment upon any award rendered may be entered in any court having jurisdiction thereof.

Any time which elapses in attempting to resolve the Dispute through either or both negotiation or arbitration shall extend day-for-day any applicable statute(s) of repose or limitation of actions.

The Parties agree that this Arbitration obligation shall survive the termination of this Purchase Order, whether by default or convenience. Notwithstanding anything to the contrary, (a) Buyer reserves the right to pursue and obtain injunctive or equitable relief from a court of law; (b) if a lawsuit or arbitration is brought against Buyer in a court of law and such claims involve, directly or indirectly, Seller's Work, Buyer reserves the right to join Seller in such arbitration or lawsuit, and (c) if any claims by Seller involve, directly or indirectly, the work or obligations of other persons, Buyer reserves the right to join such other persons to its arbitration or litigation with Seller.

The pendency of any claim between Buyer and Seller does not entitle Seller to stop performance of the Work. Pending final resolution of any such claim, except as otherwise agreed in writing or provided in this Purchase Order the Seller shall proceed diligently with the performance of this Purchase Order and Buyer shall continue to make payments in accordance with this Purchase Order.

There shall be no interruption in the performance of the Work, and Seller shall proceed diligently with the performance of this Purchase Order pending final resolution of any dispute arising under this Purchase Order between the Parties hereto or between Seller and its sub tier sellers.

22. TAXES

Seller shall, unless otherwise stated in this Order, pay all taxes, levies, duties, and assessments of every nature due in connection with the Work under this Order and shall make any and all payroll deductions and withholdings required by law and hereby indemnifies and holds harmless Buyer and its Client from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

Unless otherwise provided herein, the price of the supplies/services includes all applicable federal, state and local taxes.

23. WAIVER

No waiver by the Buyer of any breach of this Purchase Order shall be held to be a waiver of any other or subsequent breach. All rights and remedies available to the Buyer shall be taken and construed as cumulative, that is, in addition to any other rights and remedies provided herein or by law.

24. PRIORITY RATING

If so identified, any Purchase Order which is a "rated order" certified for national defense use, and the Seller shall follow all the requirements of the Defense Priorities and Allocation System (DPAS) Regulation (15 CFR Part 700). Under DPAS regulations, if the Purchase Order supports the U.S. Government, is DX or DO Rated, and exceeds \$50,000.00, the Seller must acknowledge acceptance of DX-Rated orders within ten (10) days, and DO-Rated orders within fifteen (15) days of receipt hereof. Commencement of performance of the work called for by this Purchase Order in the absence of Seller's written acknowledgement thereto shall be deemed acceptance of this Purchase Order as written.

25. QUALITY CONTROL SYSTEM

Seller shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Purchase Order. Records of all quality controls inspection work by Seller shall be kept complete and available to Buyer and its customers.

26. SEVERABILITY AND INTERPRETATION

If one or more of the provisions contained herein shall be held for any reason to be invalid, illegal, or unenforceable in any respect, such provision shall not affect any other provision herein, and this Purchase Order shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Each party acknowledges that it has had a fair and reasonable opportunity to review and has reviewed this Purchase Order and any question of interpretation shall not be resolved by any rule of interpretation providing for interpretation against the drafting party. This Purchase Order shall be construed as though drafted by both Parties.

27. SURVIVABILITY

If this Purchase Order expires, is completed or is terminated, Seller shall not be relieved of the obligations in the following provisions:

- (a) (Warranty); (Buyer's Property); (Indemnification); (Confidentiality); (Patents and Data); (Advertisement); (Compliance with Laws); (Export Controls); (Disputes); (b) Those U.S. Government flowdown provisions incorporated into this Purchase Order that by their nature should survive.

28. NOTICES

Any notice to be given under this Purchase Order issued under the Terms and Conditions hereunder must be in writing. Notices may be sent via certified or registered mail; via fax with a conforming copy; or via electronic means provided an electronic signature confirms its authenticity, in a manner agreed to in advance. Notice will be deemed to have been given when received. All notices from Seller to Buyer should be mailed to the attention of the Contracts Manager, at the facility from which the specific Purchase Order was issued.

29. INSURANCE

If the items listed in Section 1 include any onsite labor, Seller shall provide and maintain insurance coverages with limits of liability not less than the following:

1. Commercial General Liability Insurance including products-completed operations with a combined single limit of \$1,000,000 Each Occurrence, \$1,000,000 General Aggregate
2. Automobile Liability Insurance with a combined single limit of \$1,000,000 Each Accident
3. Workers' Compensation and Employer's Liability Insurance with statutory limit for Workers' Compensation and Employer's Liability limits as follows:
 - 3.1. Bodily Injury by Accident: \$1,000,000 each accident
 - 3.2. Bodily Injury by Disease: \$1,000,000 each employee
 - 3.3. Bodily Injury by Disease: \$1,000,000 policy limit
 - 3.4. For monopolistic states (WA, WY, OH, ND) Workers' Compensation, and when applicable, Employer's Liability, must meet the referenced limits and be provided by the applicable state administered program.

Prior to moving on the site or starting the Work, whichever is earlier, Seller must submit a certificate of insurance naming Buyer as the certificate holder, reflecting its general liability, umbrella, workers' compensation, automobile, and equipment coverages required on the Project. Seller shall maintain such coverage throughout the period of performance of this Purchase Order and all warranty periods applicable to the Work being performed by Seller. In the event the Seller fails to obtain insurance coverage required under this Purchase Order, the Buyer may terminate this Purchase Order for default.

30. INCORPORATION BY REFERENCE

This Order incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. For FAR (Federal Acquisition Regulations) provisions incorporated by reference, "Contractor" means "Seller" and "Contracting Officer" means Buyer or the Procurement Representative.

The following clauses are incorporated by reference:

| | |
|---------------|---|
| FAR 52.222-26 | Equal Opportunity (MAR 2007) (EO 11246) |
| FAR 52.222-35 | Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212(a)) |
| FAR 52.222-36 | Affirmative Action for Workers with Disabilities (OCT 2010) (29 U.S.C. 793) |
| FAR 52.225-1 | Buy American Act – Supplies (FEB 2009) |
| FAR 52.225-9 | Buy American Act – Construction Materials (SEP 2010) |
| FAR 52.227-14 | Rights in Technical Data – General (DEC 2007) |

The Seller shall include the terms of this clause, including this paragraph, in purchase orders awarded under this Order.