

Reynolds Construction, LLC Purchase Order - Terms and Conditions

- 1. Acceptance.** This Purchase Order constitutes Buyer's offer to Seller and shall become a binding contract on the terms and conditions set forth herein when it is accepted either by Seller's written acknowledgment, or when the Seller delivers to the Buyer any of the materials or equipment, or renders any of the incidental services ordered in the Purchase Order. Any revision to the Purchase Order without prior written approval of the Buyer automatically invalidates the Purchase Order. Any reference in this Purchase Order to Seller's quotation or proposal does not imply acceptance of any terms or conditions in that quotation or proposal. This Purchase Order may not be altered or modified except in writing, duly executed by an appropriate representative of each party.
- 2. Entire Agreement.** This Purchase Order constitutes the complete and exclusive statement of the terms of agreement between Buyer and Seller, superseding any and all prior or contemporaneous agreements, proposals or other expressions, including but not limited to quotations, proposals, memoranda and credit applications. Any terms and conditions contained in Seller's confirmation of this Purchase Order or Seller's invoice which are inconsistent with the terms and conditions hereof are hereby expressly objected to and shall not be binding on Buyer and shall not be considered applicable to the sale of goods mentioned and referred to herein. Nothing in this Purchase Order shall be construed to create a contractual relationship between persons or entities other than the Buyer and Seller.
- 3. Flowdown Provisions.** Seller assumes toward Buyer all of the obligations, duties and responsibilities, including those relating to dispute resolution, that Buyer assumes by the Contract Documents towards the Owner or other engaging party, and Buyer shall have the same rights against Seller as may exist against Buyer therein. Seller and Buyer agree that in the event of a conflict between the terms and conditions of this Purchase Order and the terms of the Owner-Buyer Agreement the terms of the Purchase Order shall govern and control. To the extent the Owner-Buyer agreement provides for a mutual waiver of consequential damages by the Owner and Buyer, the Buyer and Seller waive claims against each other for consequential damages arising out of or relating to this Purchase Order.
- 4. Time.** Time is of the essence in the performance of all of Seller's undertakings arising out of this Purchase Order. Seller will immediately notify Buyer, in writing, of any actual or potential circumstance which may delay or impair Seller's ability to perform in accordance with required delivery or other performance dates. Buyer may postpone delivery of goods and services for such reasonable periods as may be required to conform to actual progress of work or other conditions encountered for the project and in such case Seller will use best efforts to comply with Buyer's instructions in regard to time of deliveries or manner of performance at no additional expense to Buyer. Should Seller believe the proposed schedule delay impacts the cost of the materials or services provided under this purchase order, Seller shall notify Buyer in writing within 5 days of the proposed schedule change of any requested changes to the price. Buyer, in its sole discretion, may elect to amend the purchase order price to accommodate the delayed schedule, or to maintain the prior shipment date in lieu of postponement. Acceptance or acquiescence of late delivery or other performance by Seller shall not be deemed a waiver of Buyer's rights or remedies pertaining to such delay, nor shall it constitute a waiver or extension of the time for the performance of any future or remaining deliveries or other performance obligations. If Seller fails to ship on or before the said date, Buyer, in addition to its other rights and remedies, without notice to Seller, may refuse to accept such goods, cancel this Purchase Order, and procure Goods/Services by other means and in such case Seller will be responsible for reimbursing any and all resulting excess costs, losses and expenses incurred by Buyer.
- 5. Submittals.** Seller shall provide samples, shop drawings, special warranties, instructions, operation and maintenance manuals and any other materials required or specified to be provided in respect of the Goods/Services. All such submittals, including required revisions or corrections to same, shall be provided without additional charge and in conformity with all original or revised schedules, in such a manner so as not to delay the Buyer or Owner in the performance of the project. The approval of any Seller submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Purchase Order without written approval from the Buyer and Owner. The Buyer and Owner are entitled to rely on the adequacy, accuracy and completeness of any professional certifications required by the Purchase Order concerning the performance criteria of systems, equipment materials, including all relevant calculations and any governing performance requirements.
- 6. Drawings, etc.** All drawings, blueprints, dies, patterns, tools, technical data, etc. furnished to Seller by Buyer in connection with this Purchase Order are and shall remain the property of Buyer and may not be copied or otherwise reproduced or used in any way except in connection with work performed under this Purchase Order and the same shall not be disclosed to third parties or used in any manner detrimental to the interest of Buyer. All drawings, blueprints, dies, patterns, tools, technical data, etc. prepared or constructed by Seller and paid for by Buyer shall likewise be the property of Buyer. All of Buyer's property of the kind discussed in this paragraph shall be promptly delivered to Buyer upon completion or delivery hereunder or upon termination of this Agreement.
- 7. Safety Data Sheets.** Seller shall submit to the Buyer prior to shipment all Safety Data Sheets (SDS) required by law for materials or substances provided to Buyer
- 8. Delivery.** Delivery will be DDP (to the project location on the face of the Purchase Order) Incoterms® 2020, and at a time directed by Buyer. No shipment is to be made without Buyer's prior release and consent. Units must be delivered in a proper sequence to facilitate orderly and efficient handling, storage and use at the project, and must be complete and properly labeled. Each package shall be numbered and labeled with Buyer's order number, contents and weight, shall contain an itemized packing slip and shall be properly packed for shipment. No charges will be allowed for packing, crating, freight, express or cartage unless specified on the face hereof. No partial shipments will be accepted unless requested and approved by Buyer in writing. Buyer may refuse any deliveries tendered after 2:00 P.M. or on a Friday unless 48 hours advance notice of late delivery is given to the jobsite and Buyer approves same. Shipments sent COD without the Buyer's written consent may be rejected and shall be at Seller's risk. Goods shipped in excess of the quantity designated in this Purchase Order may be returned at Seller's expense.
- 9. Inspection.** All deliveries are subject to Buyer's right of inspection and rejection, which may occur at any time prior to completed installation and incorporation of goods into Buyer's work for the Project. Payment for Goods/Services shall not constitute acceptance and shall be without prejudice to any claims or remedies which Buyer may have in respect of same. Buyer reserves the right to reject and refuse acceptance of any goods which do not conform to Buyer's description, specifications, or the Seller's warranties (express or implied). Seller shall pay the cost of handling, inspecting and testing goods rejected and all transportation charges, in addition to other incidental and consequential damages sustained by Buyer. The Buyer shall have the right to inspect all materials or equipment during any stage of manufacture or production by the Seller or the Seller's supplier(s). The Buyer's acceptance shall not constitute acceptance as to latent or hidden defects not subject to discovery upon reasonable inspection.
- 10. Title and Risk of Loss.** Title to all items to be delivered hereunder shall remain in Seller until such items are delivered DDP to Buyer at the point specified on the face of this Purchase Order. All risk of loss or damage to items to be delivered by Seller hereunder shall be upon Seller until title to such items passes to Buyer, but Seller shall bear all risk of loss or damage to items rejected by Buyer after notice of rejection until such items are redelivered to Buyer, except for the loss, destruction of, or damage to such rejected items resulting from the negligence of Buyer's officers, agents or employees.
- 11. Changes.** The quantities, prices, terms, conditions or other pertinent specifications of this Purchase Order shall not be changed except by Buyer's written authorization. Where supplies to be furnished are to be specifically manufactured in accordance with drawings and/or specifications, Buyer may, at any time, by written order make changes in (i) drawings, designs, or specifications, (ii) method of shipment of packing, and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or time required for performance of the work under this Purchase Order, an equitable adjustment shall be made to the contract price or delivery schedule or both, but only if Seller furnishes written notice to Buyer of its intent to seek additional compensation or time within five (5) days from the date of receipt of notification of change. Seller shall submit its substantiation of additional costs and/or time extensions within ten (10) days from the date of receipt of notification of change unless said period is extended in writing by Buyer.
- 12. Invoices.** Invoices shall (i) be rendered separately for each delivery; (ii) cover not more than one order, and (iii) be rendered with order number noted thereon. If the invoice is subject to a cash discount, the discount period will be calculated from the date the invoice is received by Buyer or date of delivery, whichever occurs last. All monthly statements shall be mailed to Buyer at the office address as shown on the face hereof, marked "Attention Accounting Department."
- 13. Payment.** NET 45 days. If Seller fully performs all obligations to Buyer and is not in breach or default under this Purchase Order, and Buyer has received all written warranties, manuals and other submissions applicable to Goods/Services, then Buyer will make payment to Seller for Goods/Services performed in accordance with terms of payment specified above; provided, Buyer may set off reasonable amounts from any payment otherwise due to cover (i) retention specified on the face of this Purchase Order, (ii) amounts or percentages being withheld from Buyer under the Prime Contract in respect of Goods/Services, (iii) actual or potential loss, damages or expenses for which Seller is responsible, and (iv) undelivered goods or submittals, or (v) incomplete or deficient performance of services or other obligations by Seller. Seller shall provide invoices, lien waivers and other accompanying documentation in such form as reasonably prescribed by Buyer. Payment proceeds shall first be applied by Seller to satisfy claims by persons furnishing labor, material, equipment or services to Seller in furtherance of Seller's performance under this Purchase Order.
- 14. Cancellation without Cause.** Buyer reserves the right to cancel this Purchase Order, or any part thereof, for Buyer's convenience at any time prior to shipment by Seller, by giving written notice to Seller. In the event of such cancellation, or if this Purchase Order is terminated upon Buyer's belief that Seller is in default but it is subsequently determined that Seller was not then in default, Buyer shall pay to Seller an amount limited to a fair and reasonable portion of the total amount of this order allocated to Seller's satisfactory performance under this Purchase Order prior to notice of termination, adjusted for amounts and damages, if any, for which Seller is responsible. Such payment shall not include any anticipated profit, overhead, or other direct, indirect or consequential damages relating to any undelivered goods or unperformed services. Buyer shall have no liability to Seller except as expressly provided in this Paragraph 17 in the event of Buyer's cancellation of this Purchase Order.

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- 15. Force Majeure.** Neither party hereto shall be liable to the other for default or delay in delivery or accepting goods hereunder caused by fire, strike, riot, war, act of God, complete or partial shutdown of plant by reason of inability to attain sufficient raw materials or power, and/or any other similar contingency beyond the reasonable control of the respective parties.
- 16. Waivers and Remedies.** Failure of Buyer to insist on performance of any of the terms and conditions or requirements of this Purchase Order shall not be construed as a waiver of such terms conditions or requirements and shall not affect the right of Buyer thereafter to enforce each and every term, condition or requirement hereof. If Seller refuses, fails or neglects to correct defective or nonconforming Goods/Services or to perform any other obligation or fulfill any other requirement imposed by this Purchase Order, Buyer may, upon giving Seller five (5) days written notice to commence and continue satisfactory correction of such default either (i) proceed to rectify, correct, cure or mitigate the consequences thereof by whatever measures Buyer may deem appropriate, or (ii) terminate this Purchase Order, in whole or in part, by giving a second written notice to Seller. In either case, Seller shall be liable to Buyer for all direct and indirect costs and damages incurred by Buyer to take corrective measures concerning or to complete Seller's obligations. Buyer's remedies shall be cumulative and the remedies herein specified are in addition to any other remedies allowed by law.
- 17. Indemnification.** Seller shall protect and indemnify Buyer from and against all claims, damages, judgments, expenses and losses arising from infringement or alleged infringement of any United States or foreign letters patent resulting from Buyer's sale or use of the goods purchased hereunder. Seller shall defend or settle at its own expense any suit or proceeding brought against Buyer for such infringement, provided that Seller is notified promptly in writing of the commencement of such suit or proceeding and is given authority, information and assistance by Buyer for the defense or settlement thereof.
- To the fullest extent permitted by law, Seller shall indemnify, defend, and hold Buyer harmless from and against all claims, losses, expenses (including without limitation reasonable attorneys' fees), damages, causes of action (including third party claims, demands, or causes of action for contribution of indemnification), or liabilities of every kind and nature (collectively referred to hereinafter as "Claims") asserted by any party and arising out of or as a result of: (i) any alleged breach of any of Seller's obligations or warranties hereunder, (ii) any negligent act or omission of Seller, or (iii) the design or manufacture of the purchased products. Seller's duty to indemnify, defend, and hold Buyer harmless shall apply whether such Claims arise under theories of tort, contract, warranty, strict liability, or product liability.
- In the event that Seller, its employees or agents are required to come onto a Worksite of Buyer in connection with the performance of this Purchase Order, Seller shall indemnify and hold harmless Buyer and its agents, consultants, employees and others as required by this Purchase Order from all claims for bodily injury and property damage that may arise out of the Seller's presence on the Worksite in connection with the performance of this Purchase Order, but only to the extent of negligent acts or omissions of Seller or anyone employed directly or indirectly by Seller or by anyone for whose acts Seller may be liable.
- 18. Insurance.** If this agreement provides for work to be performed by Seller on property owned or controlled by Buyer, or on property of another named herein, Seller shall purchase and maintain, at its own expense, throughout the term of this Purchase Order, (i) Worker's Compensation insurance in the amounts required by law and Employer's Liability insurance with limits of not less than \$1,000,000 each accident or disease, (ii) Commercial General Liability insurance, with limits of not less than \$2,000,000 combined single limit per occurrence which shall be in an "occurrence" form and shall include coverage for all operations including contractual liability, bodily injury and property damage, and (iii) Business Automobile Liability insurance, in the amount of \$2,000,000 combined single limit per occurrence, which covers all owned, non-owned, hired or rented motorized equipment used in the performance of the work and which provides for coverage for bodily injury and property damage. Seller shall name the Buyer, Buyer's client and client's Engineer as additional insureds with respect to the Commercial General Liability and Business Automobile Liability insurance policies. Liability coverage shall be written on a primary non-contributory basis with respect to any other collectable insurance for Buyer or any other parties to be named as additional insureds, and the additional insured endorsement on the general liability policy shall include completed operations. Seller shall provide Buyer with thirty (30) days written notice prior to cancellation or material change. Seller shall provide Buyer certificates of insurance, and actual policy copies and endorsements if requested by Buyer, evidencing the above required insurance coverages prior to commencement of any work under this Purchase Order. All insurance maintained by Seller shall be primary to any insurance maintained by Buyer and/or Buyer's client, and Seller and its insurance carriers agree to waive all rights of subrogation against Buyer and Buyer's client.
- 19. Assignment.** This Purchase Order or any portion of this Purchase Order or any duty or right herein or any claim arising hereunder shall not be assigned by the Seller without the prior written consent of the Buyer. Further, this Purchase Order shall not be assigned by operation of law or a merger or judicial sale or otherwise without the prior written consent of Buyer. Any unauthorized assignment or attempted assignment by Seller shall constitute a material breach of this Agreement. This Purchase Order may be assigned by Buyer.
- 20. Warranty.** Seller warrants that the Goods/Services provided pursuant to this Purchase Order will strictly conform to the description and specifications set forth on the face hereof or otherwise furnished by Buyer to Seller, and to all applicable requirements and standards prescribed by the Contract Documents, and further warrants that said Goods/Services will be of good quality and free from latent or patent defects in material and workmanship. Goods/Services not conforming to such requirements shall be considered defective. This warranty shall be in addition to and not in limitation of any other warranty or remedy existing under applicable law, including but not limited to implied warranties of merchantability and fitness for the particular purpose contemplated by this order, and such warranties shall not be limited by any provision establishing or limiting Seller's duty to correct, repair or replace defective goods and shall not be deemed waived by the Buyers' acceptance of the Goods/Services. Warranties shall extend to the Buyer, its successors, assigns, customers and users of its customers' products and Seller shall provide directly to the ultimate users written evidence of these warranties as required.
- 21. Correction Period.** If, within one (1) year after substantial completion of Buyer's work scope under the contract with its client, or such longer period as may be otherwise prescribed by this Purchase Order, the Goods/Services are found to be defective, Seller shall, upon receipt of written notice from Buyer, promptly and satisfactorily repair, modify, replace or take other appropriate corrective action with respect to such Goods/Services at its sole expense. Such obligation shall survive acceptance of goods and services and termination of this Purchase Order. The correction period shall then continue as to the corrected and replacement goods for one year. If materials are rejected and returned to Seller due to nonconformity with the Purchase Order, Seller will reimburse Buyer for all costs of handling and transportation (including initial delivery) in addition to other incidental and consequential damages sustained by Buyer.
- 22. Legal Compliance.** Seller represents that it is complying with and agrees that it will comply with all applicable laws, regulations, and orders imposed by federal, state, or other government authority bearing on the Goods/Services or obligations of Seller under this Purchase Order, including but not limited to any such Laws relating to health and safety of any person; the environment; hazardous substances; labor and employment; immigration; disadvantaged business enterprises; and civil rights. Before entering upon the premises of Buyer to perform any work required by this Purchase Order, Seller will furnish the Buyer evidence of Seller's compliance with such State Workmen's Compensation law, and if Buyer so requests Seller will furnish appropriate sworn statements or other evidence of compliance with any other applicable law, order or regulation.
- 23. Equal Opportunity.** Contractor supports the principle of equal opportunity for all, without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disabilities or veteran's status. Contractor is an Equal Opportunity Employer, and it expects its suppliers to honor the principles of opportunity for all without prohibited discrimination. Contractor commits to compliance with applicable Executive Orders, and applicable federal, state and local laws supporting equal opportunity for all. The Contractor and Seller expressly acknowledge that if the Project is federally assisted, including but not limited to project funding from State Revolving Funds, the United States Department of Agriculture - Rural Development (USDA-RD), or other federal grant programs, then the Contractor and Seller shall abide by the requirements of 41 CFR 60-1.4(b). If the Project is for a Department or Agency of the United States, then the Contractor and Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a).
- 24. Severability.** If any term or condition contained herein shall be held to be invalid or unenforceable, the remainder of the terms and conditions herein shall not be affected thereby and each remaining term and condition of this Purchase Order shall be valid and enforceable to the fullest extent permitted by law.
- 25. Dispute Resolution.** All claims, disputes and other matters in question between Buyer and Seller arising out of or relating to this order or the breach hereof ("disputes") shall, at Buyer's option, be subject to mediation prior to instituting any arbitration or legal proceedings. Otherwise, such claims and disputes shall be resolved by litigation in a court of law, unless Buyer gives written notice to Seller designating the claim or dispute to be submitted to binding arbitration, in which case the parties shall be obligated to resolve the matter through arbitration. Such notice of election to arbitrate may be given at any time upon Buyer's own initiative or in response to a written arbitration request of Seller. A request by Seller to arbitrate shall be deemed denied by Buyer if no written response approving submission to arbitration is given to Seller within 14 days after Buyer's receipt of such arbitration request. Buyer may obtain joinder and consolidation of any arbitrated dispute with any other arbitration involving third parties if such other arbitration involves common questions of law or fact.
- 26. Governing Law.** The provisions of this agreement shall be governed by the laws of the State where the project is located.