



EMCOR FACILITIES SERVICES TERMS AND CONDITIONS OF PURCHASE ORDER – MATERIALS ONLY

ACCEPTANCE - THE TERMS AND CONDITIONS HEREOF BECOME THE EXCLUSIVE AND BINDING AGREEMENT BETWEEN THE PARTIES COVERING THE PURCHASE OF THE GOODS OR SERVICES HEREUNDER WHEN THIS PURCHASE ORDER IS ACCEPTED BY ACKNOWLEDGMENT OF SELLER OR COMMENCEMENT OF PERFORMANCE UNLESS A WRITTEN AND EXECUTED CONTRACT BETWEEN THE PARTIES EXISTS, IN WHICH CASE, THIS PURCHASE ORDER SHALL BE SUBJECT THERETO. THIS PURCHASE ORDER CAN BE ACCEPTED ONLY ON THESE TERMS AND CONDITIONS. ADDITIONAL OR DIFFERENT TERMS PROPOSED BY SELLER WILL NOT BE APPLICABLE UNLESS ACCEPTED IN WRITING BY BUYER. NO CHANGE MODIFICATION, WAIVER OR REVISION OF THIS PURCHASE ORDER SHALL BE EFFECTIVE UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER. In the event of a conflict, the order of priority shall be as follows (a) the provisions of any written and executed subcontract or contract between the parties, (b) typed or handwritten provisions on the face hereof initialed by an authorized representative of Buyer, (c) attachments or exhibits hereto initialed by an authorized representative of Buyer, and (d) these preprinted terms and conditions.

PRICES: Seller hereby agrees and represents that prices charged for goods provided hereunder are not in excess of prices charged other customers of Seller for orders of similar quantities of substantially similar goods on comparable terms. The prices shall be deemed to include packaging costs, customs duties, and all taxes including, without limitation, all applicable federal, state, and local taxes. All such taxes shall be stated separately on Seller's invoice

PAYMENT: Payment shall not become due until Buyer has received a correct packing sheet, if applicable, correct invoice and the conforming goods or services. Buyer will issue payment within sixty (60) days of invoice receipt. Amounts due to errors on invoices will be fully credited against future invoices.

INVOICES: Invoices shall be submitted in duplicate and shall contain the following information: purchase order number, item number, description of items, sizes, quantities, unit prices, applicable taxes and extended totals in addition to any other information requested by Buyer. Payment of the invoice shall not constitute acceptance of the goods or services and shall be subject to adjustment for failure of Seller to meet the requirements of this Purchase Order. Buyer may at any time set off any amount owed by Buyer to Seller against any amount owed by Seller or any of its affiliates to Buyer.

OVERSHIPMENTS: Buyer will pay only for maximum quantities ordered. Over shipments will be held by Buyer at Seller's risk and expense and shipped to Seller at Seller's risk and expense.

F.O.B. POINT: Unless otherwise specifically provided on the face of this Purchase Order, the goods shall be delivered on an F.O.B. destination basis to Buyer's designated plant(s) or location(s). Seller shall bear all risks of loss, damage, or destruction to the goods called for hereunder until final acceptance by Buyer at destination.

WARRANTY: Seller warrants that all goods and services delivered hereunder shall be free from defects in workmanship, material, and manufacture; shall comply with the requirements of this Purchase Order, including any drawings or specifications incorporated herein and, where design is Seller's responsibility, be free from defects in design. Seller further warrants all goods purchased hereunder shall be new and not refurbished, unless otherwise agreed by Buyer, and of merchantable quality and shall be fit and suitable for the purposes intended by Buyer. The foregoing warranties shall constitute conditions and are in addition to all other warranties, whether expressed or implied, and shall survive any delivery, inspection, acceptance, or payment by Buyer. If any supplies delivered hereunder do not meet the warranties specified herein or otherwise applicable, Buyer may, at its option, (i) require the Seller to correct, at no cost to Buyer, any such defective or nonconforming goods or services; or (ii) return such nonconforming goods or services, at Seller's expense, to the Seller and recover from the Seller the order price thereof, or (iii) correct the defective or non-conforming goods or services itself and charge Seller with the cost of such correction. Seller shall be responsible for all costs related to such warranties, including, without limitation, labor, material, inspection and shipping to and from Buyer's facilities and may deduct such costs from amounts due Seller. The foregoing remedies are in addition to all other remedies at law or in equity or under this Purchase Order and shall not be deemed to be inclusive. All warranties shall run to Buyer and to its customer(s). The provisions of this clause shall not limit or affect the rights of Buyer under Section 9. Seller agrees to indemnify and hold Buyer and its affiliates harmless from and against any costs, damages, expenses or losses relating to a breach of the foregoing warranty or any other terms contained herein.

CHANGES: Buyer may at any time, by a written order and without notice to sureties make changes within the general scope of this Purchase Order. If any such change causes an increase or decrease in the cost of or time required for performance of this Purchase Order, an equitable adjustment shall be made and the Purchase Order shall be modified in writing accordingly. No protest by Seller of such adjustment hereunder shall be valid unless asserted within five days from the date of receipt by Seller of the notification of the change.

TERMINATION FOR DEFAULT: It is understood and agreed that time is of the essence under this Purchase Order. Buyer may, by written notice, terminate this Purchase Order in whole or in part if the Seller fails to perform any of the provisions of this Purchase Order. The insolvency

or adjudication of bankruptcy, the filing of a voluntary petition in bankruptcy, or the making of an assignment for the benefit of creditor, by Seller, shall be deemed a material breach hereof by Seller.

TERMINATION FOR CONVENIENCE: Buyer may terminate, for convenience, this Purchase Order, in whole or in part, at any time by written notice. Seller shall be entitled to payment for the contract price for all goods and services completed in accordance with this Purchase Order and not previously paid for. The foregoing shall be applicable only upon a termination for Buyer's convenience and shall not affect or impair any right of Buyer to terminate this Purchase Order for Seller's default in the performance hereof under Section 9.

WAIVER: The failure of Buyer to enforce at any time any of the provisions of this Purchase Order, to exercise any election or option provided herein, or to require that any time performance by the Seller if any of the provision hereof shall in no way be construed to be a waiver of such provisions.

PATENTS, ROYALTIES, AND ENCUMBRANCES: All goods and services must be free from liability for royalties, patent rights, and mechanics liens or other encumbrances, and Seller agrees to indemnify Buyer against all claims, demands, losses, costs and actions for alleged infringements of patent rights, copyrights, trademarks, trade secrets, or other intellectual property interests in the use, sale, or re-sale of said goods or services. If an injunction is issued against Buyer or Buyer's customer's use, sale, lease, license or other distribution of the goods or services and any part thereof (or if Buyer reasonably believes that such an injunction is likely), Seller shall, at its expense (and in addition to Seller's other obligations hereunder), and as Buyer requires: (a) obtain for Buyer and/or Buyer's customers the right to continue using the goods or services; or (b) replace or modify the goods or services so it becomes non-infringing, but functionally equivalent.

BUYER'S PROTECTION IN CONNECTION WITH WORK DONE AT IT'S PLANT: Seller shall take such steps as may be reasonably necessary to prevent personal injury or property damage during any work hereunder that may be performed by any employees, agents, or subcontractors of Seller at Buyer or Buyer's customer's plant or property or when Seller delivers the goods or services to Buyer or its customer's property, and Seller shall indemnify and hold harmless Buyer and its affiliates harmless from and against all loss, liability, and damages arising from or caused directly or indirectly by any act or omission of such employees, agents or subcontractors, and Seller shall obtain, at Seller's cost, such Employee's Liability and Compensation Insurance, as will protect Buyer and its affiliates against the aforementioned risks and against any claims under any Workmen's Compensation and occupational Disease Acts.

GRATUITIES: Seller warrants that it has not offered or given and will not offer or give to any employee, agent, or representative of Buyer or Buyer's customer a gratuity with a view toward securing any business from Buyer or influencing such person with respect to the terms, conditions, or performance of any contract with or order from Buyer. Any breach of this warranty shall be deemed a material breach by Seller of each and every contract between Buyer and Seller.

NON-DISCLOSURE OF CONFIDENTIAL MATTER: Specifications, information or other data furnished by Buyer shall be treated as confidential information by Seller, shall remain Buyer's property, shall be used only in the performance of this Purchase Order and shall be returned to Buyer on Buyer's request. Seller shall not disclose to any third party the existence or terms of or transactions under this Purchase Order nor shall it use the name or logo of Buyer without the permission of Buyer. Buyer may reproduce and use the manuals, schematics and merchandising literature provided by Seller under this Purchase Order. Seller hereby grants and agrees to grant to Buyer and to the extent required by Buyer, to Buyer's affiliates and customers, an irrevocable, non-exclusive, royalty-free right and license to use, any intellectual property embodied in the goods or services in order for Buyer or its customer to obtain full use of such goods or services.

ASSIGNMENTS: This Purchase Order shall not be assigned by Seller without the prior written consent of Buyer, and any purported assignment without such consent shall be void. Buyer may assign this Purchase Order to its customer or any other third party upon written notice to Seller.

BUYER FURNISHED PROPERTY: All tools or other materials furnished by Buyer to Seller for use in the performance on this Purchase Order shall remain the property of Buyer and shall only be used by Seller in the performance of this Purchase Order and in accordance with the terms hereof, and shall be returned to Buyer when requested or upon the completion or termination of the Purchase Order. Seller shall indemnify Buyer against any property damage, bodily injury or other losses caused by Seller's use of such property.

EMPLOYEES: Seller is an independent contractor and none of Seller nor Seller's employees or subcontractors are agents or employees of Buyer. Without limiting the foregoing, Seller is not authorized to represent Buyer or make any commitments on behalf of Buyer and Buyer expressly disclaims any such liability. Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this Purchase Order, Seller will immediately notify Buyer.

APPLICABLE LAW/SEVERABILITY: This Purchase Order shall be governed by, subject to, and construed in accordance with the laws of the State of Ohio, without giving effect to any choice or conflict of law provision or rule that would cause the application of the law of any other jurisdiction. If any provision of this Purchase Order is held invalid by any law or regulation or by any court, such invalidity shall not affect the enforceability of other provisions hereof.

SELLER'S INVOICE: Must clearly indicate the above Purchase Order Number for the items shown hereon, subject to the attached terms and conditions referenced herein. All containers must be properly labeled in accordance with the OSHA Hazard Communication Standard and that the shipment includes a Material Safety Data Sheet (MSDS). All overages in EXCESS of Quantity Indicated will be accepted on a No-Charge basis

unless otherwise indicated. This Purchase Order expressly limits acceptance in accordance with the instructions, terms and conditions defined herein, and stated on the attachment hereto. Any alternative or additional terms and conditions proposed by Seller, other than those contained herein or in the Services Agreement, shall not be effective unless expressly agreed to in writing by an authorized agent of EMCOR Facilities Services, Inc. ("EFS") Any performance by Seller will be interpreted and construed as acceptance of EFS's terms and conditions as written. The Purchase Order amount includes all costs for labor, materials, fees, taxes, freight/handling and other charges associated with the order. This Purchase Order is subject to the terms and conditions of the Services Agreement between Seller and EFS, (the "Services Agreement", if any). If there is a conflict between the terms contained in this Purchase Order and such Services Agreement, the Services Agreement shall govern. Seller hereby acknowledges that Seller has read EFS's Code of Business Conduct and Ethics which can be found at www.emcorgroup.com, and shall act at all times consistently with the terms thereof. EFS shall have the right, in its sole and absolute discretion, to immediately terminate this Purchase Order and/or the Services Agreement for cause in the event that Seller or Seller's employees or agents violate such Code of Business Conduct and Ethics. Seller represents and warrants to EFS that it has the full legal right to grant to EFS the licenses granted under this Purchase Order, and that the products/software do not infringe upon any of the patents, copyright, trade secret or other proprietary rights of any person and to its knowledge are free of viruses, worms, time bombs, Trojan horses, spyware, or other malicious or "self-help" code. Seller shall defend and indemnify and hold EFS harmless against any claim to the extent attributable to a violation of the foregoing representation and warranty.

EEO/AFFIRMATIVE ACTION EXECUTIVE ORDERS: This contractor and subcontractor shall, to the extent they apply, abide by (1) the requirements of 41 CFR §§ 60-1.4(a), 60-4.3, 60-300.5(a) and 60-741.5(a), which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin and require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability; and (2) all the provisions set forth in 29 CFR Part 471, Appendix A to Subpart A (Executive Order 13496). Subcontractor shall post in conspicuous places, available to employees and applicants for employment, all notices required by federal, state, and local law. Subcontractor will, in all solicitations or advertisement for employees placed by or on behalf of contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, age, national origin, ancestry, disability, handicap or veteran status or any other basis prohibited by applicable federal, state or local law.

SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST (FROM THE OFFICE OF FOREIGN ASSET CONTROL (OFAC)): Subcontractor represents that neither it nor any of its sub-subcontractors nor any of their respective owners are (a) on the Specially Designated National and Blocked Persons list published by the Office of Foreign Assets Control of the U.S. Department of the Treasury or (b) subject to sanctions under the laws of any governmental authority.

PERSONAL INFORMATION: The parties do not anticipate disclosing or making available personal information, as that term is defined under applicable laws, in the ordinary course of providing the services/work specified in this agreement. To the extent subcontractor has access to any such personal information, subcontractor shall treat it as confidential and shall not sell, retain, use, or disclose the personal information for any purpose other than for the specific purpose of performing the services/work. Subcontractor shall not combine such personal information with personal information received in other contexts. Subcontractor shall comply with all applicable laws in the collection, maintenance, transfer or other processing of such personal information including, without limitation maintaining reasonable safeguards, consistent with industry best practices, for the protection of such personal information. To the extent that such personal information is disclosed in violation of this section or accessed without authorization, including without limitation, in connection with a breach, theft of loss, subcontractor shall immediately notify contractor.