

Purchase Order – Terms and Conditions

1. **Applicability.** These terms and conditions shall apply to any purchase order (“Purchase Order”) submitted by MC Wells Contracting, LLC, a Nebraska limited liability company (“Buyer”), to a seller of goods, work or services are ordered to who the Purchase Order is directed (“Seller”). Buyer and Seller may be referred to herein as a “party” and collectively, as the “parties.”

2. **Entire Agreement.** The Purchase Order, including these terms and conditions and any specifications or attachments to the Purchase Order, constitute the sole and entire agreement between the parties (collectively, the “Agreement”). The Seller's quotation is incorporated in and made a part of this Agreement only to the extent of specifying the nature and description of the goods, work and/or services ordered, and then only to the extent that such items are consistent with the other terms of this Agreement. No other terms or conditions shall be binding upon Buyer unless accepted by it in writing.

3. **Changes – Terminations.**

(a) Buyer may, by written change order, make changes in the specifications or drawings or increase or decrease the quantities originally ordered. If any such change affects the amount due or the time of performance hereunder, an equitable adjustment shall be made.

(b) In the event of cancellation, substantial modification, or delay of the project or program for which these goods, work or services are ordered, Buyer may terminate this Agreement by written notice as to all or any part of the goods not shipped or work or services not completed prior to receipt by Seller of said notice. As to goods which are standard manufactured items, Buyer's only obligation shall be to pay for goods shipped to Buyer prior to receipt by Seller of notice of termination. As to goods specially manufactured for Buyer, Seller shall stop all work on receipt of notice of termination, unless otherwise directed by Buyer, and Buyer shall pay reasonable costs incurred by Seller directly connected with this order, including costs and cancellation charges actually incurred by Seller under subcontracts, and when necessary to avoid undue hardship, an allowance for overhead and profit on such costs incurred. As to work or services, Buyer's only obligation shall be to pay for the portion of the work or services completed at the time of receipt by Seller of notice of termination, determined by multiplying the percentage completed by the total price for the work or services. Such payment shall not exceed the total price of this order and shall be reduced by any refunds or salvage values available to Seller and the aggregate amount of any previous payments to Seller. Upon such payment, title to material and goods shall pass to Buyer. Buyer reserves the right to audit Seller's computation of any payments claimed under this clause.

(c) If Seller shall default in any respect under this Agreement or become insolvent or if a petition in bankruptcy or insolvency is filed by or against Seller under any state or federal law, Buyer may terminate this order or the undelivered or uncompleted part thereof immediately upon written notice to Seller.

(d) In addition to Buyer's right of termination as herein provided, Buyer's rights and remedies shall be as provided by law or as otherwise provided herein, and shall, in no event, be limited by terms proposed by Seller or subject to arbitration.

4. **Price and Payment.** The price herein specified shall, unless otherwise expressly stated, exclude all sales, use and excise taxes and duties which either party is required to pay with respect to the sale of the goods, work or services covered by this Agreement, but shall include all charges for packing and loading. Any taxes, freight and duties shall be shown as separate items on invoices. Payment will be made in accordance with the applicable provisions of this Agreement. Unless otherwise indicated, payment terms will be computed from the date of delivery of goods or completion of work or services, or the date of receipt of properly executed invoices, whichever is later.

5. **Force Majeure.** Time is of the essence. Seller shall not, however, be liable for delays or failure to ship or complete work or services during the time and due to causes beyond its control and not due to its fault or negligence, provided it gives prompt notice of such cause to Buyer. Buyer may terminate this order or the undelivered or uncompleted part thereof if Seller does not ship or recommence the work or services within a reasonable time after notice of any delays referenced in the above sentence

6. **Waiver:** Failure of Buyer to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein or by law or to properly notify Seller in the event of breach, or the acceptance of or payment for any goods, work or services hereunder, or approval of design, shall not release Seller of any of the warranties or obligations of this Agreement, and shall not be deemed a waiver of any right of Buyer to insist upon strict performance hereof or any of its rights or remedies as to any such orders, regardless of when shipped, received, completed or accepted, or as to any prior or subsequent default hereunder, nor shall any purported oral modification or rescission of this order by Buyer operate as a waiver of any of the terms hereof.

7. **Inspection.** Buyer shall have the right to inspect and test the goods at any time during manufacture and prior to shipment and to final inspection within a reasonable time after arrival at the ultimate destination. Buyer shall have the right to inspect work or services at any time during their performance and to final inspection within a reasonable time after their completion. The goods, work and services shall not be deemed accepted until after said final inspection. The making or failure to make any inspections of, payment for, or acceptance of the goods, work or services shall in no way impair Buyer's right to reject nonconforming goods, work or services or to avail itself of any other remedies to which Buyer may be entitled, notwithstanding Buyer's knowledge of the nonconformity, its substantiality or the ease of its discovery. Buyer may return any goods which are defective, unsatisfactory, or of inferior quality or workmanship, or fail to meet the specifications of this order. Such goods shall, unless used by Buyer, remain the property of Seller, and may be returned at Seller's risk and expense. Buyer shall, at its sole option, either (i) give Seller a reasonable time to correct the nonconforming goods, work or services or (ii) cancel the order as to such goods, work or services and retain its rights with respect to cover as provided by law

8. **Expediting.** The goods furnished under this Agreement shall be subject to expediting by Buyer or its representatives. Buyer's personnel shall be allowed reasonable access to Seller's plants, and those of its sub-suppliers, for expediting purposes. As required by Buyer, Seller shall supply schedules and progress reports for Buyer's use in expediting

9. **Warranties.**

(a) Seller hereby warrants to Buyer that all goods sold or services performed (1) shall have been produced, sold, delivered, furnished and/or performed in strict compliance with all applicable federal, state and local laws, ordinances and regulations; (2) shall be merchantable and new and free from defects in design, workmanship and material; (3) shall be fit and suitable and perform satisfactorily for the purposes and under the conditions made known by Buyer; (4) shall conform to the specifications set forth in standards published or adopted by Seller in the case of goods not covered by specifications, which shall be at least equal to nationally recognized codes and established industry standards or of the best quality, if no quality is specified; (5) shall be transferred to Buyer without any liens, encumbrances or defects in title; and (6) shall not violate the intellectual property rights of any third party, either in connection with the sale to or use of such goods by Buyer. Seller further shall pass on to Buyer the benefit of any manufacturer warranties. The warranties set forth above are in addition to any warranty or service guarantee offered by Seller, or any warranties implied or provided by law.

(b) Except as otherwise disclosed to Buyer by Seller in writing or unless required by Buyer specification, Seller warrants that all goods manufactured, sold, or furnished hereunder do not contain any asbestos, polychlorinated biphenyls (PCBs), lead, lead paint, mercury, or any other Hazardous Material of any type.

(c) In the event any of the above warranties is breached, Buyer may invoke all remedies provided by law, including those available under the U.S. Uniform Commercial Code.

10. **Indemnity.** Seller shall be liable for and shall defend, indemnify and hold Buyer and its contractors, agents and employees harmless from and against all costs, expenses and charges, including reasonable attorney's fees, and any and all claims, suits, actions, demands, and proceedings of whatsoever nature and kind, as may be instituted or made against Buyer, its contractors, agents and employees, arising from or relating to the quality of or any defect in material workmanship of Seller's products or any negligent or willful act or omission of Seller, its contractors, agents or employees. In the event of any litigation brought against Buyer and arising out of and in any way connected with any of the above events or claims, against which Seller agrees to defend Buyer, Seller shall vigorously resist and defend such litigation through counsel of its choice and Buyer shall fully cooperate therewith.

11. **Patent Indemnity.** Seller shall indemnify and save harmless Buyer from any expense, loss and cost of damage resulting from any allegation or charge that any goods furnished by Seller hereunder, or work or services performed hereunder, or the use thereof for the purpose for which the goods, work or services are sold, constitutes an infringement of any patent or other intellectual property right and Seller shall assume the defense of Buyer at Seller's expense against such charge. Buyer shall promptly notify Seller of any implied or actual charge of infringement

and furnish Seller, at Seller's request and Seller's expense, all assistance and information available to Buyer pertinent to the charge of infringement. Buyer shall, however, have the right to be represented in such matters by counsel of Buyer's own selection acting at Buyer's own expense. Buyer may, at any time up to 90 days after it is finally adjudicated that such infringement exists, at no expense to Buyer, have Seller do one or more of the following to minimize Buyer's damage or liability:

(a) alter the goods, work or services to make them non-infringing, provided that such altered non-infringing goods, work or services will fulfill substantially the same function as they fulfilled prior to such alteration;

(b) exchange non-infringing goods, work or services which will fulfill substantially the same function for the infringing goods, work or services which in that case become Seller's property;

(c) obtain a settlement or license permitting Buyer's use of any infringing goods, work or services; or

(d) remove and repurchase the infringing goods, work or services at Buyer's straight-line depreciated cost plus the costs of transportation, installation and removal.

12. **Compliance.** Seller warrants that all goods, work and services sold hereunder shall have been produced, sold, delivered and furnished in strict compliance with applicable laws and regulations, including the Federal Toxic Substances Control Act of 1976, and the Federal Occupational Safety and Health Act of 1970, to which they are subject. Seller shall execute and deliver such documents as may be required to effect or to evidence compliance. All laws and regulations required in agreements of this character are hereby incorporated by reference, including but not limited to (a) provisions of Executive Orders 10925, 11141, 11246, 11375 and 11598, as amended, and any subsequent executive orders relating to equal opportunity for employment on government contracts and all rules and regulations of the President's Committee on Equal Employment Opportunity, and (b) the Rehabilitation Act of 1973 and the Viet Nam Era Veterans Readjustment Assistance Act of 1974 and regulations issued thereunder.

13. **Shipping:** Seller shall suitably pack, mark and ship in accordance with applicable laws, instructions, if any, from Buyer and the requirements of common carriers to secure the lowest transportation costs. Seller shall be liable for any difference in freight charges or damage to the goods by its failure to comply therewith. Seller will send Buyer, as soon as the goods have been forwarded, a notice of shipment giving order number, car number and initials, if any, and a condensed description of the goods; otherwise, Seller is liable for any demurrage charges incurred. If the quantity ordered is sufficient, cars shall be loaded to minimum capacity, otherwise, the Seller agrees to pay the excess freight.

14. **Applicable Law.** The definition of terms used, interpretation of this Agreement and the rights of all parties hereunder shall be construed under and governed by the internal laws of the State of Nebraska, without regard to its conflicts of laws principles. The exclusive venue for any disputes arising out of or in connection with this Lease shall be the state and federal courts of

Douglas County, Nebraska, and the parties hereby irrevocably submit to the jurisdiction of such courts.

15. ***Definitions.***

(a) “Environmental Law” means all federal, state, local, or municipal laws, regulations, notices, directives, criteria, demands, codes, standards, orders, permits, licenses, certificates, or approvals, domestic or foreign of any government authorities or rule of common law, relating to environmental matters.

(b) “Goods” means those articles, equipment, materials, supplies, drawings, data and other property specified or required to be furnished under this Agreement.

(c) “Hazardous Material” means any hazardous or toxic substance, material, or waste, including but not limited to those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.010) or by the United States Environmental Protection Agency as hazardous substances (40 CFR Part 302 and amendments thereto), petroleum products and their derivatives, and such other substances, materials, and wastes as become regulated or subject to cleanup authority of any Environmental Law or which form the basis for liability under any Environmental Law.

(d) “Work” and “services” include design, delivery, installation, inspection, testing and expediting specified or required to be furnished under this Agreement.

16. ***Assignment.*** Any assignment of this Agreement or of any rights hereunder or hypothecation thereof in any manner in whole or in part, by operation of law or otherwise, without the prior written consent of Buyer shall be void.