

PURCHASE ORDER

Purchaser's Job Number:
Purchase Order Number:
Date of Purchase Order:

PURCHASER:
("Frener & Reifer America Inc., 733 3rd Avenue, Suite 1641, NY10017, New York City")

SELLER:
("")

PROJECT:
("")

JOB SITE:
("Job Site")

PRODUCTS BEING PURCHASED:
("Products")

PURCHASE PRICE:
("Price")

Dollars
(\$)

(Refer to Schedule 1 for price details and Sales/Use Tax Breakdown. Above "Price" includes delivery, storage, insurance, engineering and freight costs and applicable taxes, assessments and premiums under law, unless otherwise indicated under Schedule 1.)

("Discount Terms")
(The above terms are incorporated by reference and more fully explained below.)

SPECIAL CONDITIONS, if any, applicable to this PURCHASE ORDER, including Unit Price adjustments, are shown under Schedule 3 attached hereto.

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United States of America

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america@frener-reifer.com
www.frener-reifer.com

Tax number.
20-5548303
Invoice_FRA@frener-reifer.co

Corporate Capital
USD 52.000.00

In connection with construction of the Project pursuant to Purchaser's Contract with Owner, Purchaser agrees to buy, and Seller agrees to sell, the Products described herein, upon the terms and conditions set forth below.

Terms and Conditions

Schedule 1: Products and Prices

Schedule 2: Contract Documents

Schedule 3: Special Conditions

Schedule 4: Schedule

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Purchase Order

TERMS AND CONDITIONS

1. PRODUCTION AND DELIVERY.

- A. Seller shall obtain, fabricate and/or manufacture the material, equipment, supplies, and other goods described on the Purchase Order Cover Page (“Cover Page”) (“Products”) and shall ship and deliver such Products F.O.B. Job Site (or such other place designated by Purchaser), all in accordance with the Contract Documents identified in Schedule 2, and according to the delivery schedule described in Schedule 4, and any changes or modifications made pursuant thereto. Seller assumes all of Purchaser’s responsibility under Purchaser’s contract with Owner for furnishing the Products in accordance with the Contract Documents and all requirements of the Products relating thereto in the Contract Documents which are hereby incorporated by reference into this Purchase Order as if fully set forth herein, including without limitation all standards of quality, warranties, requirements for documentation, and requirements for certification contained in the Contract Documents. All deliveries and installations, if applicable, must be made strictly as stated in this Purchase Order or as directed by Purchaser’s superintendent.
- B. All Products included in this Purchase Order shall be delivered to the Job Site or to Purchaser in working order and first-class condition in accordance with Project specifications and plans. Purchaser reserves the right to return all damaged or improper items (or to follow Architect’s and/or Owner’s instructions concerning same) without any cost to Purchaser or to Owner.
- C. Seller recognizes and agrees, as a condition of payment of the Price for the Products subject to this Purchase Order, that Seller’s obligation to provide such Products includes delivery to the Job Site location designated by Purchaser for receipt of the Products. Purchaser’s written acknowledgment of receipt and inspection of such Products shall be conclusive evidence of Seller’s compliance with this delivery obligation.
- D. Any special cleaning/maintenance instructions that may be required must be sent to Purchaser within 30 days from receipt of this Purchase Order, as set forth in Schedule 3.
- E. All Products (as designated in the Purchase Order) shipped must be clearly marked by Seller with the appropriate tag number, exactly as noted on this Purchase Order.
- F. All finish samples, shop drawings, and color poms, strike-offs or cuttings are to be sent by Seller for approval to the specified designer (contact information on first page of Purchase Order), if applicable.

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- G. It is required that upon receipt of this Purchase Order, the Seller provide Purchaser with a schedule listing estimated lead times and delivery, which shall be incorporated in Schedule 4. Items may be shipped via multiple deliveries as agreed between Purchaser and Seller. Any additional charges incurred as a result of failure to follow the agreed upon delivery schedule, will be borne by the Seller.
- H. Seller agrees to crate, box or otherwise pack the Products for shipment in accordance with standard commercial practices and so as to meet the carrier's requirements, and Seller agrees that all containers shall be suitably marked so as to identify the contents without opening. The cost of delivery shall be paid by Seller unless otherwise indicated on the Purchase Order. Seller shall ship the Products by the most economical form of transportation and route as is reasonably required by the nature of the Products and Seller shall be responsible for and pay all costs and expenses in excess of said most economical form of transportation, unless agreed to otherwise by Purchaser. All costs and expenses resulting from any deviation of the terms hereof shall be borne solely by Seller. If this Purchase Order provides that the Purchaser is to bear the cost of delivery of the Products, Seller shall prepay the same on Purchaser's behalf.
- I. For any damages and defects which are due to inadequate packaging, Seller shall be exclusively liable and shall bear all related costs and expenses. This also applies in case Seller assigns/delegates shipping to a third party.
- J. Seller shall collect all and any cumbersome packaging free of charge and/or shall bear all and any costs for their disposal. Seller shall conclude, at own expenses, an insurance contract covering any and all risks relating to the goods until transfer of risks.

2. PRICE.

- A. Purchaser shall pay to Seller, for the satisfactory performance of Seller's obligations hereunder, the amount specified in the Cover Page as the grand total ("Grand Total"), subject only to additions and deductions of Products as provided under this Purchase Order and as may be required under the Contract Documents. The Grand Total and all unit prices shown in the Cover Page shall be deemed to include all costs of and compensation for Seller's performance hereunder.
- B. The agreed Grand Total of this Purchase Order is not subject to increase for any reason whatsoever, including, without limitation, changes in the cost of any items to be furnished and/or installed (if applicable) hereunder or increases in wages.

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3. PAYMENTS.

- A. On or before each Monthly Billing Date, Seller shall submit to Purchaser, in such form and supported by such data as Purchaser or Owner's construction lender may require, a progress payment application/invoice showing the value of the Products delivered and received as verified by Purchaser's acknowledgment on precise bills of materials. Within seven (7) days after receiving a progress payment from Owner which includes payments to Purchaser for conforming Products delivered and billed by Seller, Purchaser shall make a progress payment to Seller as of the corresponding Monthly Billing Date after deducting (a) all previous payments, (b) current retainage, and (c) any amounts previously paid for Products returned to Seller as being unsatisfactory or not conforming to the requirements of the Contract Documents, and (d) any sum reasonably necessary to protect Purchaser from any breach of this Purchase Order by Seller. In the event that Purchaser withholds funds pursuant to subsection (d) of this paragraph, Purchaser shall send Seller written notice specifying the nature and basis of any withholding which Purchaser invokes pursuant to such paragraph.
- B. A final payment, consisting of the unpaid balance of the Grand Total, shall be made within thirty (30) days after the last of the following to occur: (a) Purchaser's receipt of all Products in satisfactory condition, (b) unqualified acceptance thereof by Purchaser and/or Owner, (c) final payment by Owner to Purchaser on account of the Products including retainage, (d) delivery of all guarantees, certifications, and information required under the Contract Documents, and (e) delivery of a general release, in a form satisfactory to Purchaser, executed by Seller running to and in favor of Purchaser and Owner.

4. PAYMENT CONDITIONS.

- A. Seller will receive the payments made by Purchaser and will hold the right to receive such payments in trust to be applied first to the payment of laborers, suppliers, and others responsible for providing and delivering the Products, and all taxes and other costs applicable thereto; then such appropriate sums shall be applied by Seller as payments from Purchaser. When requested by Purchaser, Seller shall furnish satisfactory evidence to verify compliance with these requirements. Seller shall also furnish to Purchaser, with Seller's first Application For Payment, a list of all companies, entities, and individuals supplying labor or materials for the performance of the Work ("Information Schedule"). Such Information Schedule shall be updated with every Application For Payment.
- B. Notwithstanding anything to the contrary in Paragraph 3 hereof, Purchaser shall have no liability or responsibility for any reason whatsoever for any amounts due or claimed to be due to Seller except to the extent that Purchaser has actually received funds from Owner specifically designated for disbursement to Seller. To the extent permitted by law, receipt of such funds by Purchaser shall be a condition precedent to

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Purchaser's liability and responsibility to pay such funds to Seller. To the extent applicable, nothing set forth herein shall be construed to limit Seller's rights under the Lien Law if the jurisdiction where the Project is located, if any, to file and enforce a valid mechanic's lien against the Owner's right, title or interest in the real property on which the Project is being constructed or against any fund applicable thereto. Therefore, Seller agrees to look solely to proceeds of foreclosure of any such mechanic's lien and/or to funds actually received by Purchaser from the Owner specifically designated for disbursement to Seller for payment hereunder.

- C. Purchaser reserves the right to withhold, as an additional reserve and without limiting its other rights and remedies, an amount sufficient: (a) to defend, satisfy and discharge any claim that Seller has failed to make payment for labor, services, materials, equipment, taxes, or other items or obligations furnished or incurred in connection with the Products or has caused damage to the Products; (b) to reimburse Purchaser for any backcharges incurred as a result of any act or omission by Seller hereunder; (c) to protect Purchaser from the possible consequences of any other breach or default by Seller hereunder; or (d) to secure Purchaser with respect to any breach or default by Seller or its affiliates, parent company and subsidiaries under any other agreement.
- D. Payment hereunder shall not be evidence of the proper performance or progress of the Products and no payment shall be construed to be acceptance of defective, faulty or improper work or materials.
- E. Retention of this Purchase Order for ten (10) days or shipment or invoicing by Seller shall constitute acceptance of all terms and conditions of this Purchase Order. Invoices will not be processed unless each invoice (1) is in quadruplicate; (2) refers to the above Job and Purchase Order numbers; (3) a signed copy of this Purchase Order is returned; and (4) is accompanied by signed delivery receipts. Where applicable, an insurance certificate satisfactory to Purchaser must be received and accepted prior to processing of invoices.
- F. Purchaser, and its duly authorized representatives, shall have the right to examine and inspect all Seller's books and records related to the Products, and to such other evidence of payment to Seller for the purpose of verifying the utilization of deposits or accuracy of any invoices received by Purchaser or compliance by Seller with the terms and conditions of the Purchase Order.
- G. Each Application for Payment and/or invoice shall be accompanied by a waiver of lien covering such payment and in the event of final payment, a final and unconditional lien waiver.

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5. TIME.

- A. Seller shall immediately begin work to insure that delivery of the Products shall be made in accordance with the requirements of the Schedule. Time is of the essence in the Seller's delivery of the Products under this Purchase Order, and it is essential that the Products be provided to Purchaser in a manner and in accordance with the Schedule so as to permit Purchaser and/or Owner to complete construction of the Project in the fastest and most efficient manner possible.
- B. The attached Schedule 4, which is made a part of this Purchase Order, has been prepared by Purchaser to indicate delivery dates by which Products must be delivered at the Job Site or such other location designated by Purchaser in satisfactory condition in order to assure construction of the Project in accordance with Purchaser's Schedule. The dates indicated in Schedule 4, both as to submittals of shop drawings, samples, certifications, guarantees, and other required or reasonably requested information, and as to deliveries of Products, may be modified only in accordance with the provisions contained therein.
- C. Seller understands and acknowledges that Purchaser's maintenance of its construction schedule on the Project depends upon timely receipt of the Products and it is therefore essential that Purchaser be advised immediately of any circumstances which could delay the delivery of the Products (or any portion thereof) in accordance with the Schedule by telephone or electronic mail, followed by a written notice confirming such fact within two (2) calendar days after the commencement of any such delay so that action may be taken to mitigate the consequences of any such delay and arrangements for alternative solutions can be made.
- D. Seller is liable for all direct and consequential damages arising out of breach of this Purchase Order. Consequential damages include, without limitations, delay damages established by Purchaser or Owner or claimed against Purchaser by reason of Seller's breach of this Purchase Order. Any claim against Seller for breach of this Purchase Order may be asserted by Purchaser or by Owner directly.
- E. Seller hereby warrants and represents to Purchaser that, so far as it is possible to know after making a thorough investigation and review, all Products shall be manufactured and delivered at the time or times required in the Schedule.

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6. WARRANTIES.

Seller warrants to Purchaser and Owner that all goods furnished under this Purchase Order will be new unless otherwise specified and will be of good quality, free from faults and defects and in conformance with the description of the Products contained in the Cover Page and in the Contract Documents. Without limiting the warranties referred to above or any other warranties required by the Contract Documents or prescribed by law, Seller assumes and adopts, for the benefit of Purchaser and Owner, all standards, descriptions, specifications, warranties, and guarantees required of Purchaser as expressed in the Contract Documents, or this Purchase Order, with respect to the Products. Unless a more stringent requirement is imposed by the Contract Documents or by law (which more stringent requirement is hereby incorporated by reference into Seller's requirements under this Purchase Order), Seller guarantees and agrees to correct promptly all Products found to be faulty or defective or not in accordance with the Contract Documents for a period of one (1) year after the date of acceptance of the Project by Owner in addition to the specific warranty of the Products. This guaranty is in addition to all warranties under law, and is not in derogation of Purchaser's or Owners contractual rights. If Purchaser or Owner elects to accept defective or non-conforming Products, Purchaser may require an appropriate reduction in the Price, in an amount required of Purchaser by Owner, instead of requiring correction. Seller guarantees that all labor and materials used in the performance of this Purchase Order will meet the requirements of all governmental authorities and the Project specifications. The warranties contained herein and any implied by law shall survive any acceptance, final inspection, and payment by the Purchaser and shall run in favor of the Purchaser, its successors and assigns.

7. ASSIGNMENT.

- A. Seller shall not assign this Purchase Order, or any amounts due or to become due hereunder, or subcontract any substantial portion hereof, without the prior written consent of Purchaser. Seller shall not be relieved of its duties and obligations hereunder by any assignment or subcontract and shall remain as fully responsible for the acts and omissions of its assignees and subcontractors, as Seller is for its own acts and omissions and those of its agents, servants, and employees. No assignment by Seller of any right hereunder shall be effective and any such attempt shall be null and void. No third party shall have any right to enforce any right of Seller under this Purchase Order.
- B. Purchaser may assign this Purchase Order at any time, and either Purchaser or Owner may enforce all rights set forth herein.

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8. DELAYS.

- A. Seller shall be liable for any and all damages incurred by Purchaser and/or Owner by reason of delays in Seller's performance hereunder, unless such delays result directly from a Force Majeure Event (defined below) or the active interference of Purchaser. If Seller for any reason, other than the aforesaid causes, fails to perform, or if it becomes reasonably apparent that Seller will fail or be unable to perform within the time required by this Purchase Order, Purchaser, without limiting its other remedies, may, upon two (2) calendar days written notice to Seller, obtain substituted performance in a commercially reasonable manner and offset or recover against Seller the cost thereof.
- B. Neither party hereto shall be liable nor be able to terminate this Agreement for any failure to perform hereunder where such failure is proximately caused by a Force Majeure Event. A "Force Majeure Event" shall mean an occurrence beyond the control and without the fault or negligence of the party affected and which by exercise or reasonable diligence the said party is unable to prevent or provide against. Without limiting the generality of the foregoing, force majeure occurrences shall include: acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, acts of foreign combatants, terrorists acts, military or other usurped political power or confiscation, nationalization, government sanction or embargo, labor disputes of third parties to this Agreement, or the prolonged failure of electricity or other vital utility service. Any party asserting Force Majeure as an excuse to performance shall have the burden of proving proximate cause, that reasonable steps were taken to minimize the delay and damages caused by events when known, and that the other party was timely notified of the likelihood or actual occurrence which is claimed as grounds for a defense under this clause.

9. DEFAULT-REMEDIES.

i. Examination of Defects – Liability for Defects.

- A. For all and any defects of the goods existing at the time of transfer of risk, even if the defects surface only after the time of transfer of risk, Seller is liable according to this Purchase Order for all damages resulting directly or indirectly from Seller's failure to supply the Products in accordance with this Purchase Order, including, but not limited to, incidental, special and consequential damages.
- B. Seller's liability for defects and warranty of quality apply for the entire duration of Purchaser's liability and warranty of quality towards Owner.
- C. Purchaser shall examine the goods within a reasonable period of time of receipt regarding possible quality and quantity defects/shortcomings; any claim is considered timely if made to Seller within ten (10) business days of such inspection, it being

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understood that all inspections of crated materials shall be completed within sixty (60) days of delivery to Purchaser unless otherwise agreed by the parties. In case of hidden defects/shortcomings, any claim is considered timely if made to Seller within ten (10) business days of such discovery of defects/shortcomings. In any case, Purchaser may request Seller to remedy deficiencies or to replace defective goods.

- D. Seller shall remedy deficiencies or replace defective goods without delay. Seller shall bear all related costs, in particular all transportation, processing, packaging and material costs. Purchaser may, in any case, claim any and all damages; in particular, Purchaser may claim damages rather than requesting specific performance. If the first attempt of replacing defective goods fails, the replacement is to be considered entirely failed. In the event that Seller cannot replace the defective or deficient Products in a time reasonably satisfactory to the Purchaser, Purchaser may terminate this Purchaser Order as set forth below.
- E. In case Purchaser's rejects the Products because of defects, Seller shall indemnify and hold harmless Purchaser and Owner, and Purchaser reserves all rights to recover against Seller.
- F. Any and all direct and indirect costs and expenses that Purchaser may bear as a consequence of defective goods shall be charged to Seller. This also applies in case defects are discovered after goods have left Purchaser's plant and until the agreed or statutory limitation period for Purchaser's liability for defects towards the Owner expires.
- G. If any defect surfaces within six (6) months of risk transfer, it shall be presumed that the defect existed at the moment of risk transfer, unless it can be shown that said presumption is incompatible with the type of goods or defects.

ii. Default – Remedies

- A. Should Seller at any time: (a) fail to supply the materials, equipment, and other things required of it in sufficient quantities and of required quality to perform its obligations hereunder with the skill, conformity, promptness and diligence required hereunder in accordance with Section (i) above or otherwise as set forth in this Purchase Order; (b) misappropriate the Purchaser's funds; (c) become insolvent; or (d) fail in the performance or observance of any of the covenants, conditions, or other terms of this Purchase Order, then in any such event, each of which shall constitute a default hereunder by Seller, Purchaser shall, after giving Seller notice of default and forty-eight (48) hours within which to cure, have the right to exercise, in its discretion, any one or more of the following remedies:
 - (i) require that Seller utilize, at its own expense, overtime labor and additional shifts as necessary to overcome the consequences of any delay attributable to Seller's default;
 - (ii) attempt to remedy the default by whatever means Purchaser may deem necessary or appropriate, including, but not limited to, correcting, furnishing, delivering, or

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otherwise completing the Products, or any portion thereof, by itself or through others (utilizing where appropriate any materials and equipment previously purchased for that purpose by Seller) and deducting the cost thereof (plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) from any monies due or to become due to Seller hereunder;

- (iii) recover from Seller all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential (including without limitation any increase in Purchaser's cost of insurance resulting from Seller's failure to maintain insurance coverages required hereunder), and all reasonable attorneys' fees and other expenses suffered or incurred by Purchaser by reason of or as a result of Seller's default;
 - (iv) terminate this Purchase Order and subject Seller to liability for all damages sustained by Purchaser or Owner.
- B. After the procurement of the Products by the exercise of any one or more of the above remedies and acceptance of the Products by Purchaser and full payment therefor by Owner, Purchaser shall promptly pay Seller the undisbursed balance of the Price, if any. If the cost of remedying any default or procuring any substitute Products, plus the allowance for administrative burden, together with any other damages or losses sustained or incurred by Purchaser, shall exceed the undisbursed balance of the Grand Total, Seller and its guarantors, if any, shall pay the difference within ten (10) days of written demand from Purchaser.
- C. The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy given hereunder or under the Contract Documents, or now or hereafter existing at law or in equity. Seller's guarantors, if any, agree to be bound to Purchaser with respect to such remedies.
- D. Except as limited by this Purchase Order or the Contract Documents, Seller shall have all remedies available at law or in equity for a material breach of this Purchase Order by Purchaser. Any default by Purchaser shall be deemed waived unless written notice thereof shall have been received by Purchaser within five (5) days of the occurrence thereof.
- E. Should any termination for default under Article 9 be determined to be invalid, improper or wrongful, such termination shall be deemed to have been a termination for convenience as provided in Article 18 below.

10. TITLE-SECURITY INTERESTS.

- A. This Purchase Order is for an entire and indivisible performance as set forth in Paragraph 1, notwithstanding provision for partial deliveries or payment in installments. In the event that full or partial payment is made by Purchaser to Seller prior to the delivery of all the Products, title to the Products identified in this Purchase Order at the time of such payment or thereafter shall pass to Purchaser, and Seller

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shall be deemed a bailee of all items remaining in its possession. Additionally, Seller grants to Purchaser a security interest in all Products which are or may become identified as part of this Purchase Order at any time, which security interest shall be in addition to all other rights of the Purchaser under this Purchase Order or applicable laws. All goods in which Seller has, or comes to have, an interest and which either conform to the Project specifications, or which could be incorporated into conforming goods by Seller's manufacturing processes, shall be deemed identified as goods to which this Purchase Order refers from the date of this Purchase Order.

- B. Seller shall maintain adequate books and records so as to be able to segregate and physically identify the Products, including all components thereof. Seller warrants and represents that when Purchaser takes title to the Products under the terms and conditions of the Purchase Order, title will be free and clear of all liens and encumbrances. Seller further agrees to execute any and all documents which Purchaser deems necessary to effectuate said transfer of title.
- C. Notwithstanding the passing of title to Purchaser or Owner, in accordance with this Section 10, until such time as the Products or any part thereof has been: (i) delivered or installed (as applicable) by Seller and (ii) accepted by Purchaser, Seller hereby assumes the entire risk of loss of the Products or any part thereof from any cause whatsoever. Seller further agrees that until acceptance by Purchaser, the loss, damage, or destruction of the Products or any part thereof shall not release Seller from its obligation to fully perform under this Purchase Order.
- D. Purchaser shall at all times have title to all drawings and specifications furnished by it to Seller and intended for use in connection with the Purchase Order. Seller shall use such drawings and specifications only in connection with the Purchase Order and shall not disclose such drawings and specifications to any person, firm, or corporation, other than government inspectors or the employees or subcontractors of Purchaser. The Seller shall, upon the request of Purchaser upon performance of all terms and conditions of the Purchase Order, promptly return all drawings and specifications to Purchaser.
- E.

11. INSURANCE.

- A. Notwithstanding any other provision of this Purchase Order or any requirement of law to the contrary, the risk of loss or damage to the goods identified to the Purchase Order shall be and remain with Seller until the time of acceptance of conforming goods by Purchaser and, if applicable, by Owner or Architect hereunder; and Seller shall maintain adequate and commercially reasonable insurance coverages for all Products identified to the Purchase Order to the full extent of their replacement cost. Purchaser's security interest in the Products identified by this Purchase Order shall extend to the proceeds of insurance thereon. Purchaser and Owner (if applicable) shall be named as an additional loss payee on all such policies of insurance.

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- B. In addition to the above, Seller shall obtain and maintain at its expense for the duration of this Purchase Order the following insurance coverages. A certificate or certificates of insurance must be presented to Purchaser, in form and content satisfactory to Purchaser, prior to commencing any work and prior to receiving any payments, evidencing insurance with at least the following coverages and limits:
- (i) Workers Compensation Insurance including occupational disease in accordance with the law and Employer's Liability Insurance with minimum limits of \$1,000,000.
 - (ii) Commercial General Liability Insurance with \$5,000,000 limit of liability for bodily injury and property damage (broad form) combined single limit per occurrence/aggregate available on a per project basis, to include contractual liability coverage and products liability/completed operations coverage for twelve (12) months or for any longer period if required elsewhere in the Contract Documents (such longer period shall take precedence). Seller's Insurance is to be primary to any insurance carried by Additional Insureds.
 - (iii) Commercial Automobile Liability Insurance including all owned, non-owned and hired vehicles with \$1,000,000 limit of liability for bodily injury and property damage combined single limit per occurrence and in the aggregate.
 - (iv) Transit Insurance coverage in such minimum coverages as reasonably acceptable to Purchaser.
- C. The certificate of insurance is to be furnished to Purchaser before commencing the work, and will provide for 30 days prior written notice to Purchaser of cancellation or as otherwise required by the Contract Documents. Purchaser's acceptance of insurance in the limits as stated above shall not limit Seller's liability hereunder. Invoices will not be processed for payment until insurance certificates are received and accepted.
- D. Purchaser and Owner, as well as any other parties required by the Contract Documents, shall be named under the Commercial General Liability Policy and the Commercial Automobile Liability Policy as additional insureds by endorsement. All coverages shall include waivers of subrogation in favor of the Additional Insureds by endorsement. All coverages shall be primary and non-contributory as the additional insureds.

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12. COMPLIANCE.

Seller shall, at its own expense, obtain all necessary licenses and permits pertaining to the Products and comply with all statutes, ordinances, rules, regulations and orders of any governmental or quasi-governmental authority having jurisdiction over the Products, including, but not limited to, those relating to safety and the environment. Seller shall promptly correct any violations of such statutes, ordinances, rules, regulations and orders committed by Seller, its agents, servants and employees; and Seller shall receive and respond to, and shall defend, indemnify and save harmless Purchaser and Owner, as well as anyone to whom Purchaser is obligated, and their agents, servants and employees from and against any loss, liability, or expense arising from any violations and any citations, assessments, fines, or penalties resulting therefrom.

13. INDEMNITY.

- A. To the fullest extent permitted by law, Seller agrees to defend, indemnify and save harmless Purchaser and Owner, as well as any other parties which Purchaser is required under the Contract Documents to defend, indemnify and hold harmless, and their agents, servants and employees (the "Indemnitees"), from and against any claim, cost, expense, or liability (including attorneys' fees, and including costs and attorneys' fees incurred in enforcing this indemnity), attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of property (including loss of use thereof), to the extent caused by, arising out of, resulting from, or occurring in connection with the Products; provided, however, Seller's duty hereunder shall not arise if such injury, sickness, disease, death, damage, or destruction is caused by the sole negligence of a party indemnified hereunder. Seller's obligation hereunder shall not be limited by the provisions of any worker's compensation act or insurance.
- B. Seller hereby holds the Indemnitees harmless of and from any claims made as a result of any actual or alleged violation or infringement of any patent or intellectual rights, arising out of Seller's performance of this Purchase Order.

14. SUBSTITUTIONS.

Substitutions or alternates shall be permitted only in accordance with the terms of the Contract Documents and as approved by the Owner or Purchaser based on timely and adequately detailed request by Seller.

15. CHANGES.

- A. Seller agrees to be bound by changes to the Contract Documents to the same extent as Purchaser may be bound thereby. Upon request of Purchaser, and in time and manner sufficient to permit Purchaser to comply with its obligations under the Contract Documents, Seller shall submit a written proposal for any applicable Grand Total and time adjustment attributable to any change to the Products, detailed as Purchaser or Owner may require, supported by and conforming to the requirements of the Contract

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Documents. Seller hereby expressly waives any claims for extras, additional charges, or any increase in the Grand Total except as expressly agreed on in writing in advance between Purchaser and Seller. Unless Purchaser and Seller shall have agreed in writing in advance to an increase in the Grand Total, no claims for any amounts in excess of the Grand Total shall be valid and Seller hereby waives any such claims.

- B. Purchaser shall have the right to make, without cost or penalty for so making, changes as to packing, testing, designation, specifications, designs and postponements as to delivery schedules. If such change would cause an increase or decrease in the price of the Products, Seller shall notify Purchaser within two (2) days of receipt of notice of change. The Purchaser shall have the right to cancel the Purchase Order without any further cost, liability or obligation to Seller, if, in Purchaser's sole discretion, either of them deem Seller's proposed increase or decrease of price caused by such change, to be unreasonable. The Purchaser shall also have the right to cancel the Purchase Order, without any further cost, liability or obligation to Seller, if Purchaser deems in its sole discretion, that Seller's refusal to lower the price is unreasonable.

16. DISCOUNTS.

If Seller's invoices are subject to cash discount, the discount period will be calculated from the date the invoice is received by Purchaser, unless otherwise indicated under "Discount Terms" on page 1 of this Purchase Order.

17. DISPUTES.

Any claim, dispute or other matter in question between the Purchaser and the Seller, shall be resolved by submission to either a federal or state court of competent jurisdiction and located in the County and State where the Project for which the Products are being purchased is located, wherein exclusive jurisdiction and venue shall lie. For purposes of this provision, both the Purchaser and Seller irrevocably submit to the personal jurisdiction of any such court and agree that any claims arising hereunder may be brought therein and without regard to any forum non conveniens considerations. The parties agree that this Purchase Order shall be governed by the laws of the State of New York without regards to its conflicts of law provisions.

18. EARLY TERMINATION.

- A. If Owner terminates its contract with Purchaser or stops work on the Project for a reason other than the default of Purchaser, Purchaser may terminate this Purchase Order for the same reason, and Seller's rights and remedies (including the basis for compensation) shall be limited to the corresponding rights and remedies available to Purchaser under the Contract Documents. Should this Purchase Order be terminated for default, Seller shall assign all purchase orders or other contracts necessary for the

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manufacture or assembly of the Products to Purchaser if Purchaser, in its sole and absolute discretion, requests such assignments. Nothing herein shall create any duty on the part of Purchaser to accept the assignment of any purchase order or contract hereunder.

B. Further, in its sole discretion and without notice to any guarantors, Purchaser may terminate this Purchase Order for its convenience upon the giving of written notice to Seller. In no event shall Seller be entitled to consequential damages or loss of profits on portions of the Products not yet produced. If terminated for convenience, Seller shall be entitled to be paid all costs actually incurred in the manufacture of the Products provided hereunder.

C.

19. NOTICES.

All written notices provided for in this Purchase Order or in the Contract Documents shall be deemed given, made or served by sending the same via nationally recognized overnight delivery carrier (i.e. Federal Express or DHL), or delivered by hand, as follows:

(a) To the Seller:

With a copy to:

(b) To the Purchaser:

With a copy to:

Giuliano Iannaccone, Esq.
Tarter Krinsky & Drogin, LLP
1350 Broadway, 11th Floor
New York, New York 10018

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or to such other addresses as Seller or Purchaser, from time to time, shall designate by notice given to the other as hereinabove provided. Delivery shall occur: (y) if by hand, on the day that the notice shall have been left with the person described in the prior sentence and, (z) if by delivery service, on the date indicated on the delivery receipt or in the absence thereof, on the third day following the date of mailing. Notices sent by facsimile transmission shall be of no force or effect unless followed by a written notice as required hereunder and within twenty four (24) hours.

20. LIENS.

- A. Seller agrees to bond promptly on demand, and no later than ten (10) days after filing, any lien(s) which may be filed by any person, firm, or other entity performing labor or furnishing material for or through Seller. If such liens are not so discharged or removed and Purchaser or Owner or any other party causes same to be discharged or removed, all the costs of discharge or removal of lien and satisfaction thereof (including attorneys' fees) will be charged to Seller, and Seller will be liable for payment thereof.
- B. Seller agrees not to give any gratuities or rebates of any nature or form whatsoever to Purchaser's employees, consultants or to any of Purchaser's affiliated entities, whether the gratuity be in the form of a loan or direct gift. Seller also agrees not to enter into any collusive agreements with any party which would adversely affect Purchaser.
- C. The Equal Employment Opportunity clause in Section 202 of Executive Order No.11246, as amended, relative to equal employment opportunity and the implementing rules and regulations of the Office of Federal Purchase Order Compliance are incorporated herein by specific reference. Seller warrants that the Products conforms with the requirements of applicable standards specified by current rules or regulations under the Occupational Safety and Health Act of 1970, and any amendments thereto, and also that the Products has not and will not be manufactured in violation of any federal or state law, rule or regulation, including any Child Labor and Wage and Hour Law. Furthermore, Seller warrants that in all respects it is in compliance with all laws, rules and regulations of all federal, state and local governmental entities.

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21. MISCELLANEOUS.

- A. This Purchase Order, including the documents incorporated herein by reference, embodies the entire agreement of the parties and supersedes all prior negotiations, agreements and understandings relating to the subject matter hereof.
- B. The provisions of this Purchase Order and the Contract Documents are intended to supplement and complement each other. If, however, any provision of this Purchase Order irreconcilably conflicts with a provision of the Contract Documents, the provision imposing the greater duty on the Seller shall govern.
- C. **Severability.** If any provisions of this Purchase Order are invalid or unenforceable as against any person, party or under certain circumstances, the remainder thereof and the applicability of such provisions to other persons, parties or circumstances shall not be affected thereby. Each provision of this Purchase Order, except as otherwise herein provided, shall be valid and enforced to the fullest extent permitted by law.
- D. **No Waiver.** The failure of either party to insist upon the strict performance of any provisions of this Purchase Order, or the failure of either party to exercise any right, option or remedy hereby reserved, shall not be construed as a waiver in the future of any such provision, right, option or remedy, or as a waiver of a subsequent breach thereof. The consent or approval by the Owner of any act by the Consultant requiring Owner's consent or approval shall not be construed to waive or render unnecessary the requirement for the Owner's consent or approval of any subsequent similar act by the Consultant. The payment by the Owner of any amount due hereunder with the knowledge of a breach of any provision of this Purchase Order shall not be deemed a waiver of such breach. No provision of this Purchase Order shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.
- E. **Confidentiality/Non-Disclosure.** Seller shall keep all terms and conditions of this Purchase Order confidential, including but not limited to any and all images, photographs, drawings, descriptions, calculations and all documentation and business information and technical-industrial experience of particular value and other information, including commercial information, which concern products, processes, strategies and projects relating to Purchaser's activities and which were disclosed or have otherwise become known to Seller during the life of the Purchase Order and thereafter. Seller shall not make any public disclosures regarding nor utilize any Project references or materials without Purchaser's express written consent, which may be granted or withheld in its sole discretion. As used herein "public" shall mean any disclosure to a person or entity not identified by

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Purchaser as part of the Project team and requesting the information provided through disclosure. Other than as permitted by Purchaser in its sole discretion or to the limited extent required by applicable statute or code, Seller shall not post any materials on or about the Project site setting forth its name, address or other contact information. No disclosure by Seller made pursuant to legal process shall be deemed a public disclosure provided, that Seller shall give Purchaser immediate notice of any such required disclosure and shall cooperate with Purchaser's efforts, if any, to challenge the disclosure requirement, Seller shall be responsible for adherence to this provision by its staff, employees, contractors and subconsultants.

- F. **Neutral Interpretation.** This is a negotiated Purchase Order, and the parties to it are represented by legal counsel or has chosen not to be represented by legal counsel. Accordingly, any ambiguity in the language of this Purchase Order must not be construed against either party on the theory that it was the drafter of the Purchase Order.
- G. **Entire Agreement.** The Purchase Order Cover Page, these Terms and Conditions and the Exhibits hereto constitute the entire agreement between Seller and Purchaser (sometimes collectively referred to as this "Purchase Order") and may be modified only by a written instrument executed by a duly authorized representative of each party.
- H. **Counterparts.** This Purchase Order may be executed in counterparts, all of which taken together shall constitute one and the same instrument, and either party may execute this Purchase Order by signing any such counterpart. Photographic or electronic copies of such signed counterparts may be used in lieu of the originals for any purpose.
- I. **Conflicts.** In the event of any conflict between the terms of this Purchase Order and any other document, the terms of this Purchase Order shall supersede and control.

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Signatures on the following page.

IN WITNESS WHEREOF, the parties have duly executed this Purchase Order as of the date first above written.

Seller

Purchaser

By: _____

By: _____

(Signature)

(Signature)

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Seller Check ONE: Corporation Partnership/Joint Venture Individual.

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SCHEDULE 1 — Products and Price:

The Products referred to in this Purchase Order consist of the items described on the Cover Page which are being purchased and sold for the Price indicated, which includes freight costs to Job Site unless otherwise indicated and taxes payable by Seller as shown.

Sales Taxes shall be payable by Seller when title to Products is transferred within State in which Seller is located (i.e., Job is located in same State or products are shipped “Freight Allowed” instead of “FOB.” to job in another state).

Use Taxes shall be payable by Seller only if Seller has a valid tax registration number for state to which products are shipped FOB. to job in state where Seller is not located.

Seller’s Tax Registration Number for State

of _____ is _____

If your company qualifies as one or more of the business enterprise types listed below, please check the appropriate box(s) and list certifying agency(s) below:

- DBE (Disadvantaged Business Enterprise) SDVE (Small Disabled Veteran Enterprise)
- MBE (Minority Business Enterprise) WBE (Women Business Enterprise)
- SBE (Small Business Enterprise) N/A (Does not apply to your firm)

Certifying Agency(s):

If your company is a Minority Business Enterprise (MBE), please check the appropriate box:

- African American Hispanic
- Aleutian Indian Native American
- Asian

**Refer to SCHEDULE 3—SPECIAL CONDITIONS for Unit Price adjustments if applicable.

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SCHEDULE 2 — CONTRACT DOCUMENTS:

The Contract Documents referred to in paragraph 1 and elsewhere in this Purchase Order consist of the following:

The Contract Documents, sometimes referred to collectively as the “Purchase Order”, are listed below and shall constitute the Purchase Order.

- This Purchase Order, including Cover Page, with Schedules 1, 2, 3 and 4
- The Owner/Purchaser Contract
- Exhibit A (Drawings/Specifications) consisting of _____ pages, dated
- Exhibit B (General Scope of Seller’s Work) consisting of _____ pages, dated
- Additional Exhibits:

The Seller is bound by the terms of all Contract Documents.

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SCHEDULE 3 — SPECIAL CONDITIONS:

Special Conditions, including Unit Price adjustments (Note - The setting forth of unit prices shall not be construed to require Purchaser to engage Seller to perform the work for which unit prices are listed), applicable to this Purchase Order are as follows:

SCHEDULE 4 — Submittal and Delivery Schedules:

Seller shall furnish to Purchaser on a timely basis, any and all shop drawings, samples, certifications, guarantees, and information as required by the Contract Documents. Seller agrees that it shall immediately commence preparation of shop drawings and other items required for approval and shall make its initial submittals on or before _____ and shall have all submittals completed not later than

All submittals shall be followed up with timely resubmittals as required so that final approvals are obtained at the earliest possible date so as not to delay Project construction.

Delivery of the Products shall be made in accordance with the Schedule shown below. The dates indicated are those on which the Products are to be received by Purchaser (which constitute the Schedule), and Seller hereby acknowledges that time is of the essence and agrees to comply with the Schedule. Seller further recognizes that changes in the construction operations may result in changes in the scheduled delivery dates, and agrees that in the event of a delay in progress of the Project, it will hold any prescheduled deliveries, upon reasonable notice from Purchaser to do so, and will reschedule such deliveries, in accordance with Purchaser's requirements. Seller further agrees that in the event the progress of the Project requires an acceleration of deliveries, it will, upon reasonable notice from Purchaser, use its best efforts in advancing the delivery dates in accordance with Purchaser's requirements. Any modifications made to a portion of the Schedule in accordance herewith shall not alter other prescheduled portions unless specifically requested by Purchaser, nor shall modifications of delivery schedules increase the Price of the Products.

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