**PURCHASER’S GENERAL TERMS AND CONDITIONS – 2020 EDITION**

 1. **PRODUCTION,** **DELIVERY, AND INSTALLATION**. Seller shall obtain, fabricate or manufacture the material, equipment, supplies, and other goods described in the Purchase Order ("Products") and shall ship and deliver such Products F.O.B. Job Site, all in accordance with this Purchase Order and according to the Purchaser’s delivery schedule and any changes or modifications made pursuant thereto, as further described in Exhibit A.

 Further, 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 such goods; coordinate unloading requirements with General Contractor and/or responsible subtier contractor (i.e. electrical and/or mechanical contractor); commit to onsite technical assistance to meet all commissioning requirements to provide fully functional equipment system (i.e. coordinate and meet schedule requirements of General Contractor and/or subtier contractors [i.e. electrical and/or mechanical contractor]); and commit to meet all safety requirements through onsite General Contractor and/or subtier contractor (i.e. electrical and/or mechanical contractor).

 2. **PRICE**. Purchaser shall pay to Seller, for the satisfactory performance of Seller's obligations hereunder, the amount specified above as the Price, subject to additions and deductions as provided under this Purchase Order and as may be required under the Contract Documents. The Price and all unit prices shall be deemed to include all costs of and compensation for Seller's performance hereunder. Purchaser reserves the right to see itemized schedule of values and/or breakdowns for material, labor, freight, taxes, overhead, and/or profit for additional work requests. Overhead and profit shall not exceed ten percent (10%).

 3. **PAYMENTS**. On or before each Monthly Billing Date, Seller shall submit to Purchaser, in such form and supported by such data as Purchaser may require, a progress payment application showing the value of the Products delivered and received as verified by Purchaser's acknowledgment on precise bills of materials. Within (30) days after receiving the Products and Seller’s invoice, and all information and lien waivers required by Section 4, Purchaser shall make a progress payment to Seller, subject to the terms of this Purchase Order, and Purchaser may, at its option, deduct (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 Purchaser Order as reported by Purchaser to Seller (in the event Seller disputes that the returned Products are unsatisfactory or not conforming to the requirements of the Purchase Order, such dispute shall be resolved in accordance with Paragraph 18), and (d) any sum reasonably necessary to protect Purchaser from any Seller breach of this or other Seller Purchase Order(s) and, (e) any amount owed Purchaser by Seller, whether liquidated or unliquidated, under this Purchaser Order or any other agreement between Purchaser and Seller. In the event that Purchaser withholds funds pursuant to this Purchase Order, Purchaser may, at its option, send Seller written notice specifying the nature and basis of any withholding which Purchaser invokes pursuant to such paragraph.

 A final payment, consisting of the unpaid balance of the Price, (“Final Payment”) shall be made within (30) days after the last of the following to occur: (a) Purchaser's receipt of all Products in satisfactory condition and performance by Seller of all of Seller's obligations hereunder, (b) unqualified acceptance thereof by Purchaser, (c) delivery of all guarantees, certifications, and information, (d) delivery of a general release, in a form satisfactory to Purchaser, executed by Seller running to and in favor of Purchaser, and (e) delivery of a final lien waiver in form attached hereto as Exhibit B-2.

 4. **PAYMENT** **CONDITIONS**. Payments by Purchaser to Seller shall be applied first to the payment of laborers, suppliers, and others responsible for providing and delivering the Products identified to such payments, and all taxes and other costs applicable thereto. In connection with all requests for payment, Seller shall furnish satisfactory evidence to verify compliance with these requirements, including lien waivers from Seller and any subtier subcontractor or supplier of Seller in a form agreeable to Purchaser. Interim lien waivers shall be in the form attached hereto as Exhibit B-1. Final lien waivers shall be in the form attached hereto as Exhibit B-2.

 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. In the event Seller disputes the amount withheld by Purchaser under this Paragraph, such dispute shall be resolved in accordance with Paragraph 18.

 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.

 5. **TIME**. Seller shall immediately begin work to ensure that delivery of the Products shall be made in accordance with the requirements of the Purchaser’s Schedule or project duration, as set forth in Exhibit A. Time is of the essence of 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 to use the Products in the fastest and most efficient manner possible.

 The Schedule indicates delivery dates by which Seller agrees to and must deliver Products in satisfactory condition in order to assure performance by Seller in accordance with Purchaser's Schedule. The dates indicated in the Schedule, both as to (a) submittals of any required shop drawings, samples, certifications, guarantees, and other required or reasonably requested information, and (b) as to deliveries of Products, may be modified by Seller only in accordance with Purchaser’s express written consent.

 Seller understands and acknowledges that Purchaser's maintenance of its Schedule 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 email, 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.

 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.

 6. **WARRANTIES**. Seller warrants to Purchaser 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 Purchase Order. Seller warrants that he is a merchant as that term is defined by the Uniform Commercial Code, and that Seller is capable of meeting all requirements of this Purchase Order, including timeliness. Seller warrants that all goods furnished under this Purchase Order will be (a) merchantable, (b) fit for the intended purpose, (c) in conformance with the Contract Documents, and (d) free from all liens and encumbrances. For the benefit of Purchaser and without limiting the warranties referred to above or any other warranties prescribed by law, Seller assumes and agrees to be bound by, all standards, descriptions, specifications, warranties, and guarantees required of Purchaser. Unless a more stringent requirement is imposed by law (which more stringent requirement is hereby incorporated by reference into Seller's requirements under this Purchase Order), Seller 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 later of date of acceptance of the Products by Purchaser or the project substantial completion date. If Purchaser elects to accept defective or nonconforming Products, Purchaser may require an appropriate reduction in the Price, instead of requiring correction, in which case Seller agrees to give Purchaser a fair and reasonable price reduction.

 7. **ASSIGNMENT**. 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. Nothing contained herein shall prevent Seller from granting a security interest in any funds that may be due it.

 8. **DELAYS**. Seller shall be liable for any and all damages incurred by Purchaser by reason of delays in Seller's performance hereunder, unless such delays result directly from the active interference of Purchaser. If Seller for any reason, other than the fault or neglect of Purchaser, fails to perform, or if it becomes reasonably apparent that Seller will fail or be unable to perform all or any part of its responsibilities within the time required by this Purchase Order, Purchaser, without limiting its other remedies, may, upon three (3) calendar days written notice to Seller, obtain substituted performance of all or any part of Seller's responsibilities in a commercially reasonable manner and offset or recover against Seller the cost thereof.

 Should the Seller believe that it is entitled to an extension of time as contemplated herein, Seller shall, within three (3) days from the commencement of the event causing the interference, inefficiency, hindrance or delay, notify Purchaser, in writing, of the basis for the claim setting forth (a) the cause; and (b) a description of the work activities affected thereby. If any act or omission within Seller’s control or the control of others for which Seller is responsible is the proximate cause of any delay, Seller shall not be entitled to any time extension.

 9. **DEFAULT‑REMEDIES**. Should Seller at any time: (a) fail to supply all or part of 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; (b) become insolvent; or (c) 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 independently 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 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 reasonable, necessary, or appropriate, including, but not limited to, correcting, furnishing, delivering, or otherwise completing the Products or any related work, 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 under this or other Seller contracts;

 (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 costs, expenses, expert witness, and reasonable attorneys' fees suffered or incurred by Purchaser by reason of or as a result of Seller's default.

 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, Purchaser shall promptly pay Seller any 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 Price, Seller and its guarantors, if any, shall pay the difference within fifteen (15) days of written demand from Purchaser.

 The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy given in this Purchase Order 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.

 Except as limited by this Purchase Order or the Contract Documents, Seller shall have (in addition to remedies set forth in the Purchase Order or the Contract Documents) the remedies available at law or in equity for a material breach of this Purchase Order by Purchaser.

 In any dispute by or between Seller and Purchaser, Seller releases and waives any and all claims for consequential, indirect, punitive, and exemplary damages.

 10. **TITLE‑SECURITY INTERESTS.** This Purchase Order is for an entire and indivisible performance set forth herein, notwithstanding reference herein to partial performance such as 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 all goods identified to the Contract at the time of such payment or thereafter shall pass to Purchaser, and Seller shall be deemed a bailee of all items remaining in its possession. Additionally, Seller grants to Purchaser a security interest in all goods which are or may become identified, 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 Purchase Order specifications, or which could be incorporated into conforming goods by Seller shall be deemed identified as goods to which this Purchase Order refers from the date of this Purchase Order.

 11. **INSURANCE**. Notwithstanding partial payment, passage of title, or any other provision of this Purchase Order or any requirement of law to the contrary, the risk of loss or damage to the goods shall be and remain with Seller until the time of acceptance of conforming goods by Purchaser 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 insurable value and Purchaser's security interest in the Products identified to this Purchase Order shall extend to the proceeds of insurance thereon. Purchaser shall be named as an additional loss payee on all such policies.

 In addition to the above, Seller shall obtain and maintain at its expense for the duration of this Purchase Order, insurance in the types and amounts set forth in Exhibit C. Seller’s liability insurance shall be primary and non-contributory with respect to any other insurance maintained by Purchaser or Purchaser’s customer. Seller agrees to name Purchaser and Purchaser’s customer as additional insureds under its liability policy to the maximum extent allowable by law.

 As may be reasonably requested by Purchaser in writing, Seller shall furnish a certificate, satisfactory to Purchaser, from each insurance company showing the required insurance to be in force and stating that the insurance will not be cancelled or changed except upon at least thirty (30) days' written notice thereof to Purchaser or as otherwise required by the Contract Documents.

 To the extent that Seller maintains insurance coverage for loss or damage to property, Seller hereby waives subrogation of claims against Purchaser and its agents, and employees.

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

 Contractor is a federal contractor to the United States Government and must comply with certain legal provisions. Subcontractor must also comply with these provisions, as applicable and to the extent Subcontractor is not exempt by law from compliance obligations. These legal provisions, which are specifically incorporated by reference into this Subcontract, are set forth in (i) Federal Acquisition Regulation (FAR) Clauses 52.203-13 (Contractor Code of Business Ethics and Conduct), 52.203-15 (Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009), 52.219-8 (Utilization of Small Business Concerns), 52.222-26 (Equal Opportunity), 52.222-27 (Affirmative Action Compliance Requirements for Construction), 52.222-35 (Equal Opportunity for Veterans), 52.222-36 (Equal Opportunity for Workers with Disabilities), 52.222-40 (Notification of Employee Rights under the National Labor Relations Act), 52.222-50 (Combatting Trafficking in Persons), 52.222-54 (Employment Eligibility Verification), 52.244-6 (Subcontracts for Commercial Items), and 52.247-64 (Preference for Privately Owned U.S.-Flag Commercial Vessels); (ii) in Article 16 and other provisions of this Subcontract; and (iii) in any attachment referencing additional obligations that is separately incorporated as an exhibit or schedule to this Subcontract or the Contract Documents. With regards to the Subcontractor's Employment Eligibility Verification, Subcontractor shall comply with said requirement, ensure that such obligations are made part of any agreement with a lower-tier subcontractor, and provide any necessary affidavits to attest to compliance.

 Contractor is subject to Executive Order 11246, the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Assistance Act. The Equal Opportunity and Affirmative Action Clauses of 41 CFR §§ 60-1.4, 60-300.5, and 60-741.5 relating to those laws are hereby incorporated by reference. Unless exempted by law, Subcontractor agrees to take the following actions as required or appropriate: file all required forms and documents, including Standard Form 100 (EEO-I) (41 CFR § 60-1.7), comply with Executive Order 11246, the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act, and include this clause in any covered subcontracts, supply agreements, purchase orders, or bills of lading relating to this Agreement ( 41 CFR §§ 60-1.4, 60-300.5, 60-741.5).

 To the extent not exempt, Contractor and Subcontractor shall abide by the requirements of 41 CFR §§ 60- l .4(a), 60-300.5(a), and 60-74 l.5(a). These regulations 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, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status, or disability.

 13. **INDEMNITY**.

 13.1 To the fullest extent permitted by law, SELLER shall indemnify, DEFEND, and hold harmless PURCHASER and its officers, directors, MEMBERS, employees, consultants, representatives, and agents (COLLECTIVELY WITH PURCHASER, “PURCHASER'S indemnitees”) from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees and expenses, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, OR arising OR ALLEGED TO ARISE out of OR IN ANY WAY relatED to THIS PURCHASE ORDER OR performance of the Work OR OTHER ACTIVITIES OF SELLER, BUT ONLY TO THE EXTENT CAUSED in whole or in part by ANY NEGLIGENT act or omission of the SELLER, a Subcontractor, Supplier, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section. In the event of any proceeding to enforce the provisions of this Section, PURCHASER shall be entitled to recover all costs, expenses, attorneys’ fees, expert fees and other expenses incurred in enforcing the terms of this Section.

 13.2 Should any person or entity assert a claim or institute a suit, action, or proceeding against Purchaser or a party indemnified hereunder involving an indemnified claim arising out of the Products, Seller shall, at Purchaser’s option upon request of Purchaser promptly assume the defense of such claim, suit, action or proceeding, at Seller's expense, and Seller shall indemnify and save harmless Purchaser as well as anyone to be defended, indemnified and held harmless by Purchaser and its or their agents and employees, from and against any liability, loss, damage, or expense arising out of or related to such claim, suit, action, or proceeding.

 14. **INSPECTION**. Purchaser and its authorized representatives shall have the right, but not the obligation, to inspect the goods to be furnished hereunder at all reasonable times and places before and after delivery. Inspection may occur at all places where Seller is performing work or producing or assembling Products, including the work place of any vendors, suppliers and/or subcontractors of Seller.

 Inspection by Purchaser shall be for their individual benefit only and shall not be evidence of the proper performance of the Products. Inspection prior to acceptance is for purposes of assuring timeliness of manufacture or assembly and compliance with contract requirements as best can be determined prior to completion and shall not be construed to be acceptance of defective, faulty or improper work or materials.

 15. **SUBSTITUTIONS**. Substitutions or alternates shall be permitted only as approved by Purchaser in writing based on timely and adequate request by Seller. If the Seller presents any substitutions or alternates, such presentation shall be deemed to include a representation that such substitutions or alternates conform to all requirements of the Purchase Order unless Seller specifically notifies Purchaser of deviations and receives from Purchaser a written variance or waiver.

 16. **CHANGES**. Upon request of Purchaser, and in time and manner sufficient to permit Purchaser to comply with its obligations to any customer it may have, Seller shall submit a written proposal for any applicable Price and time adjustment attributable to any change to the Products, detailed as Purchaser may require, including but not limited to itemized amounts for material, labor, freight, and tax, conforming to the requirements of Purchaser. Overhead and profit for any change shall not exceed ten percent (10%). Seller hereby expressly waives any claims for extras, additional charges, or any increase in the Price except as expressly agreed on in writing in advance between Purchaser and Seller. Unless (a) Purchaser and Seller shall have agreed in writing in advance to an increase in the Price, or (b) Purchaser has directed Seller in writing to make changes to the Products or Schedule and Seller has notified Purchaser in writing of claims for additional amounts, no claims for any amounts in excess of the Price shall be valid and Seller hereby waives any such claims.

 In the event that the parties are not able to agree as to an adjustment of price or time relating to a change in the requirements of this Purchase Order, Purchaser may at any time direct the Seller in writing to change all or part of its Products or Schedules, or any other related work under this Purchase Order. Seller will promptly incorporate such changes into the work and continue and complete performance, notwithstanding the existence of any dispute regarding the changes, responsibility for the work, or the amount of any price or time adjustment claimed by either party. Seller’s failure to perform or deliver any portion of the Products during the pendency of any dispute shall constitute a default and material breach of the terms of this Purchase Order, irrespective of the merits of the dispute. Should Seller and Purchaser disagree as to the price of any changed or additional work, Seller agrees (at Purchaser’s option) to promptly perform the same and provide the changed, extra, or additional Products on a “cost plus” basis consisting of Seller’s direct costs of producing the Products plus a singe markup of ten percent (10%) for profit and overhead of every kind and description.

 17. **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 this Purchase Order.

 18. **DISPUTES**. If a dispute should arise between Purchaser and Seller arising under or relating to this Purchase Order, or the breach thereof, at Purchaser’s sole and exclusive option, the dispute may be resolved by arbitration under the Construction Industry Rules of the American Arbitration Association. Should Purchaser not elect arbitration, any disputes shall be resolved in a state or federal court of competent jurisdiction in the State of Georgia and not elsewhere. In any arbitration, the arbitrators shall have jurisdiction to award attorney’s fees and any other form of relief available to the parties under the contract or by law. The parties acknowledge and agree that this Purchase Order does involve interstate commerce, and as such, any challenge to the enforceability of the foregoing agreement to arbitrate shall be determined under the provisions of the Federal Arbitration Act. Otherwise, this agreement shall be governed by the provisions of Georgia law without regard to its conflict of laws rules.

 Seller agrees to continue to furnish the Products in accordance with the Schedule despite the existence of disputes. The existence of a dispute shall not be grounds for any failure to perform by Seller nor limit the right of Purchaser to proceed, in good faith, to remedy any default by Seller.

 19. **EARLY** **TERMINATION**. Purchaser may terminate this Purchase Order for its convenience and without cause and Seller's rights and remedies (including the basis for compensation) shall be limited to the value of any Products accepted by Purchaser. In no event shall Seller be entitled to consequential damages or loss of profits on portions of the Products not yet produced or on Products not accepted by Purchaser.

 20. **NOTICES**. All written notices provided for in this Purchase Order shall be deemed given if delivered personally to a responsible representative of the party or if sent by telecopy (with the original written confirmation copy following) or by regular mail or email to the party at its address specified herein. Either party may from time to time, by notice to the other as herein provided, designate a different address to which notices to it should be sent.

 21. **MISCELLANEOUS**. (a) All matters relating to the validity, performance, or interpretation of this Purchase Order shall be governed by Georgia law without regard to its conflicts of laws rules.

 (b) 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. There are no agreements, understandings, or other matters included in the terms of this Purchase Order except as may be expressly included herein.

 (c) The provisions of this Purchase Order are intended to supplement and complement each other. If, however, any provision of this Purchase Order irreconcilably conflicts with another provision of the Purchase Order the provision imposing the greater duty on the Seller shall govern.