



## SUPPLEMENTAL CONDITIONS

Thank you for your interest in reviewing this project and considering submitting a bid for our review and evaluation as we move forward in our pursuit of this Project. As part of this process, we want to provide you with relevant information regarding some important requirements and expectations we have for all parties working on one of our projects. In addition to the below, we have also included a sample subcontract agreement ([Attachment A](#)), Purchase Order ([Attachment B](#)). This information is not exhaustive and may change or be modified for any specific project due to the Subcontract Agreement, the Project requirements, or internal policy or procedure updates.

### **1. SAFETY**

Subcontractors shall comply with all applicable provisions of federal and state government safety laws and codes and the [MCP Safety Manual](#). A copy of your company Health and Safety Manual and site-specific safety plan shall be always on file and available for review when working on the project site. While there may be general meetings at the jobsite conducted by MCP, each subcontractor is solely responsible for conducting their own safety meetings, keep adequate records of such meetings, and provide copies to MCP on request.

As further explained in the [MCP Safety Manual](#), MCP will generally observe the safety performance of work being performed on the site. If a safety violation (or violations) is observed, MCP shall inform the responsible party orally for correction. It is the sole responsibility of subcontractor to devise and implement the correction. The responsible party shall be given a reasonable amount of time to correct the violation(s) based on the severity, urgency, and means/methods required to correct. If the responsible subcontractor fails to correct the violation within the reasonable amount of time specified, MCP may take additional actions to correct the issue and ensure compliance. Nothing in this document or the MCP Safety Manual relieves any subcontractor from their contractual obligations, including, but not limited to, meeting schedule, comply with laws, and perform work in a safe manner, nor does this document, or any action taken hereunder, act as a waiver of any breach, claim, or damage that may result from any safety violation.

THE FOLLOWING VIOLATIONS AT THE JOBSITE WILL BE GROUNDS FOR IMMEDIATE DISCHARGE OF SUBCONTRACTOR PERSONNEL:

- Gross negligence of safety and health rules and regulations, repeated violations, or the refusal to follow safety obligations;
- Fighting (physical contact), horseplay, or sleeping;
- Theft;
- Drugs or alcohol (possession or under the influence);
- Willful destruction of property;
- Possession of firearms or explosive devices; and,
- Engaging in any inappropriate, unwanted, verbal or physical advances or threats of violence to anyone at the site or in the immediate surrounding area, including any member of the public.

### **2. INSURANCE REQUIREMENTS**

Each subcontractor shall purchase and maintain insurance in accordance with the requirements set forth in [Exhibit A](#) to the Subcontract Agreement. For an overview of general

requirements, Subcontractor shall carry the following coverages with the stated minimum limits:

|  |                                  |                  |
|--|----------------------------------|------------------|
| Commercial General Liability   | Each Occurrence                  | \$1,000,000      |
|  | General Aggregate                | \$2,000,000      |
|  | Products/completed Ops aggregate | \$2,000,000      |
| Automobile Liability   | Combined Single Limit            | \$1,000,000      |
| Workers Compensation   |                                  | Statutory limits |
| Umbrella   | Each Occurrence                  | \$3,000,000      |
|  | Aggregate                        | \$3,000,000      |
| Professional Liability<br>(required only for design or<br>professional consulting) | Each Occurrence                  | \$1,000,000      |
|  | Aggregate                        | \$1,000,000      |

The Commercial General Liability policy shall be written on a Per Project basis and shall not have any exclusion(s) for residential work (if working on a residential project, as defined by the applicable jurisdiction of the project) or subcontracted work. All coverages must be evidenced by a valid Certificate of Insurance using a standard Accord form.

Subcontractors will be required to name various entities as additional insureds on a primary and non-contributory status, and there must be a waiver of subrogation must apply to all additional insureds to the extent allowed by law.

**3. MEETINGS & COMMUNICATIONS**

Prior to mobilization, a pre-installation meeting will be held with each Subcontractor. These meetings will provide a general orientation of the site and related site-specific requirements. The pre-installation meeting will also incorporate a review of the subcontractor’s scope of work, schedule, manpower requirements, submittal status, safety issues, and quality control issues. Attendance by subcontractor’s designated project manager and field supervision is required.

Throughout the project, MCP will hold weekly meetings with all subcontractors at the jobsite. Each subcontractor shall have a qualified representative present at each meeting to keep themselves apprised of the project status and schedule and any changes/challenges/ considerations/etc. that may have developed. The subcontractor’s representative shall have the authority and capability to make financial and schedule decisions concerning the subcontractor’s work. These meetings will be established and coordinated by MCP’s Project Manager or Superintendent.

**4. CLOSEOUT**

Various information, including, but not limited to, Operation & Maintenance information, as-builts, and warranties, are required for project completion. Unless directed otherwise, only electronic copies of all closeout documents will be required. For trades with multiple material or equipment information, include an index and separate files for each equipment or material type.

Owner manuals shall be provided to MCP prior to final billing, start up, or Owner's training, and includes the following:

- a) Submittal data stating equipment size and selected options for each piece of equipment requiring maintenance.
- b) Operation manuals and maintenance manuals for each piece of equipment requiring maintenance provided. Required routine maintenance actions shall be clearly identified.
- c) Names and addresses of at least one service agency.
- d) HVAC controls system maintenance and calibration information, including wiring diagrams, schematics, and control sequence descriptions. Desired or field-determined set points shall be permanently recorded on control drawings at control devices or, for digital control systems, in programming comments.
- e) A complete narrative of how each system is intended to operate, including suggested set points. It is preferred that complete air and water balance reports be included as part of the Owner's Manuals. Reports may be provided after Owner's training.
- f) As-built drawings, showing how the work was installed. Provide marked up as-built drawing information indicating any project changes or other as-constructed information. Include elevations and survey information for hidden information such as site utilities.
- g) Itemized list of provided spare parts/attic stock and location of where such items are stored at the project property.

**MCP will not be able to release final payment or retainage until all closeout documentation is submitted and approved.**

## 5. **CLEANUP**

All subcontractors are required to keep their work areas and any commonly used areas (i.e. roadways, parking lots, staging areas, etc.) clean and free of debris resulting from their work, and such clean-up efforts shall be taken on an ongoing basis, but in no event less than once daily (this included all cartons, crates, boxes, scrap, and the like). All debris shall be reduced to its minimum dimensions to allow for maximum dumpster usage.

Debris and waste that is not acceptable (petroleum products, tires, batteries, paint products, and hazardous materials) *shall not* be placed in the dumpster or otherwise disposed of at the project site. It is the subcontractor's responsibility to properly handle and dispose of such materials off-site.

If general clean-up is not being performed and MCP cannot easily identify which subcontractor(s) failed to clean-up, then the Superintendent may direct the formation of a clean-up crew. Such clean-up crew with individuals from all contractors that were on site when the debris or non-cleanliness arose and will be at no additional expense to MCP. The following table will be used to determine the number of workers each contractor shall supply to the

composite crew:

| SUBCONTRACTOR WORKERS | WORKERS TO BE PROVIDED |
|-----------------------|------------------------|
| 1-3                   | 1                      |
| 4-14                  | 2                      |
| 15-25                 | 3                      |
| 26-60                 | 4                      |

In the event MCP does not get participation in the clean-up crew, or such crews provide inadequate clean-up, MCP may perform the clean-up and such expenses and cost(s) shall be assessed pursuant to the terms of each applicable Subcontract.

## **6. PROCORE & TECHNOLOGY**

MCP endeavors to use up-to-date technology in the management of its projects. As such, Subcontractors/Suppliers will have the opportunity to use such technology in performance on this Project. Such technology will include a project management software, Procore, a separate program to complete and submit payment applications (and accompanying documentation), and a separate payment processing platform. Each of these may take some learning but will help facilitate a smooth project and lead to efficiency and ease of the payment cycle. The basic functions and your participation with these programs are at no cost to subcontractors. There are vast trainings available to assist in learning each program and our project coordinators can assist you with finding those or getting started.

In conjunction with the payment application processing program, each subcontractor will be required to submit their payment application based on an agreed upon Schedule of Values that follows the form of a standard AIA G703 form ([Example](#)).



**SUPPLEMENTAL CONDITIONS: ATTACHMENT A**

**Subcontract Agreement Sample**

**SUBCONTRACT AGREEMENT**

MCP Project #: **[PROJECT#]**

**[SUB ENTITY]**

Cost Code: **[\*\*\*\*\*]**-S

This agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ (“Effective Date”), by and between **[SUB ENTITY]** (“Subcontractor”) and **[MCP ENTITY]** (“Contractor”), for Subcontractor to perform part of Contractor’s work on the **[PROJECT NAME]** located in **[CITY, STATE]** (“Project”), as supplemented by this agreement (“Subcontract”).

1) Subcontractor’s Work includes:

**[INSERT SCOPE OF WORK INCLUDING SPEC SECTIONS]**

, as may be further or more completely defined in the Contract Documents (“Work”). Additionally, Work includes: full-time supervision; materials; licenses; permits; inspections; testing; commissioning; training; labor; tools; equipment; services; supplies; incidentals; appurtenances; hoisting, lifting, mobilization(s), unloading of materials and/or equipment necessary to perform the Work; routine and continual (at least daily) clean-up and removal from the Jobsite of all trash, waste, rubbish and debris resulting from the Work; cleaning-up all dirt, grease, marks, and the like, on the walls, ceilings, floors, fixtures, and the like, caused by Subcontractor or the Work; protection of completed work; and, completing all punch-list items and providing required close-out documentation.

2) Work shall be performed in accordance with all Contract Documents, which include, but may not be limited to:

- a) This Subcontract, including all referenced and attached documents, attachments, or exhibits;
- b) The Contract Documents, including, but not limited to:

**[INSERT LIST OF SPECIFIC CONTRACT DOCUMENTS]**

3) Work **[IS/IS NOT]** exempt from sales-tax.

4) The compensation to be paid for the proper and timely performance of Work shall be an amount totaling **[Contract Amount Words]** (\$**[Contract Amount Numbers]**), as may be adjusted pursuant to the terms of this Subcontract (“Subcontract Price”). The Subcontract Price is appropriate and reasonable compensation for the obligations established in this Subcontract and is inclusive of all overhead, profit, costs, fees, expenses, taxes, and the like.

5) Subcontractor **[SHALL or SHALL NOT]** provide Payment and Performance Bonds. If required, bonds shall be in the amount of the Subcontract Price, be in formats acceptable to Contractor, and name all obligees requested by Contractor or Owner. Subcontractor’s surety must be licensed to bond in the state in which the Project is located and be rated "A-" or better by A.M. Best.

6) The amount of retainage to be retained from each payment application is: **[RETAINAGE]**%.

7) Contractor uses an electronic construction management platform to collect, track, maintain, and circulate project information, submissions, notifications, communications, Schedules, and the like. Contractor will provide Subcontractor and their appropriate personnel access to such platform. Subcontractor agrees to use such platform throughout the Project and agrees it will be responsible for content provided on or through such platform as it relates to the Work. The Parties acknowledge and agree that the email address provided in the signature block below is the official email address for each Party relating to the Project, and that any notification allowed to be sent electronically will be deemed valid if sent to the identified email address. Each Party has the obligation to update the other Party if this email address changes. Subcontractor recognizes that such notifications may be sent by Contractor using the electronic construction platform and shall contact the Contractor to ensure such notifications are being received. Contractor’s project team will be available to assist Subcontractor with issues regarding the platform.

SUBCONTRACTOR SPECIFICALLY ACKNOWLEDGES THAT IT HAS RECEIVED, REVIEWED, AND ACCEPTED THIS SUBCONTRACT AND THE ATTACHED EXHIBIT A, EXHIBIT B-1, EXHIBIT B-2, EXHIBIT C, AND OTHER CONTRACT DOCUMENTS REFERENCED IN THIS SUBCONTRACT.

IN WITNESS WHEREOF, the Parties have agreed as of the Effective Date.

**SUBCONTRACTOR**

**CONTRACTOR**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Fax: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Fax: \_\_\_\_\_

## SUBCONTRACT AGREEMENT

MCP Project #: [PROJECT#]

[SUB ENTITY]

Cost Code: [\*\*\*\*\*]-S

### EXHIBIT A – TERMS & CONDITIONS

#### **ARTICLE 1: DEFINITIONS**

- 1.1 Change Order means a fully executed document amending the Work or Subcontract Price, or both.
- 1.2 Claim means claims, actions, suits, liabilities, demands, damages, losses, costs, expenses (including reasonable attorneys' fees), impacts to Subcontract Price, impacts to Schedule, awards, fines, judgments, and/or assertions of monetary and/or temporal relief of every kind and nature. A Claim shall be deemed to arise at the time when any monetary or temporal relief can begin to be identified.
- 1.3 Contract Documents means (a) this Subcontract, (b) the Prime Contract, and (c) documents incorporated into this Subcontract or the Prime Contract, (c) approved drawings, plans, and technical specifications applicable to the Work and the Project, and (e) any requirements that can be reasonably inferred from any of the foregoing.
- 1.4 Indemnified Parties means Owner, Contractor, Architect, and the parent companies, related companies, affiliated companies, subsidiaries, successors, and assigns of each, including the shareholders, officers, directors, partners, employees, and agents of each.
- 1.5 Jobsite means the parcel of land on which the Project is to be constructed and Work performed.
- 1.6 Law means all applicable laws, statutes, regulations, codes, rules, treaties, ordinances, judgments, permits, decrees, approvals, interpretations, injunctions, writs, orders, or other legal requirements of a governmental authority having jurisdiction over the Project, Jobsite, Work, Owner, Architect, Contractor, and/or Subcontractor.
- 1.7 Owner means the party identified as such in the Prime Contract; however, in the event there is an intermediary party, or parties, such as a developer, construction manager, or the like, then "Owner" shall mean all those parties.
- 1.8 Prime Contract means the agreement between Owner and Contractor for the Project, including all documents incorporated therein.
- 1.9 Schedule means the order and sequencing of construction activities, including the Work, developed by Contractor for the Project, as may be updated from time to time.
- 1.10 Sub-subcontractor means a party, at any tier, performing a portion of the Work, including but not limited to, material suppliers, equipment rental companies, temporary labor firms, and service providers, their respective officers, employees and agents.

Any defined term used that is not defined above shall have the meaning provided in the Contract Documents.

#### **ARTICLE 2: PERFORMANCE OF WORK**

- 2.1 Work shall and is warranted to comply with Contractor's duties and responsibilities on the Project regarding the Work, including but not limited to that it shall: (a) comply with all applicable drawings and specifications, manufacturers' instructions, Laws, and the Prime Contract; (b) be new when delivered to the Jobsite; (c) be free from defects in design, material and workmanship; (d) comply with all Laws; (e) comply with the requirements of this Subcontract; (f) be free of all liens, Claims, charges, security interests, encumbrances, and defects in title; (g) be fit for the purposes specified; (h) comply with good industry practices for the specific application (when express standards of quality and fitness of the Work are silent); (i) be performed in cooperation and coordination with Contractor and others on the Project; and (j) be performed by sufficiently skilled, qualified, and experienced persons, including but not limited to experienced and competent project management and field supervisors that are actively engaged in the Work and fluent in the English language. In the event of a conflict or ambiguity concerning any duties or responsibilities and/or this Subcontract, Contractor's reasonable interpretation based upon industry standards shall control.
- 2.2 Subcontractor shall promptly commence and diligently pursue the correction of any defect after Contractor or Owner informs Subcontractor of such defect at no cost or expense to Contractor or Owner. The cost of removal, repair, or replacement of other work due to such a defect will be at Subcontractor's expense. In the reasonable judgment of Contractor or Owner, if it is a case of emergency, delay could result in serious loss or damage to persons or property, or if the Schedule or Owner's operations will be materially adversely affected, Contractor may correct the defect without prior or further notice at Subcontractor's expense. If Subcontractor does not commence and/or diligently pursue the correction of such defect promptly, in no event later than forty-eight (48) hours from notice, then Contractor or Owner may commence the correction, for which Subcontractor accepts financial responsibility.
- 2.3 Any harm or damage to the Work shall be deemed the fault of Subcontractor for failing to protect the Work, and any correction to such Work shall be at Subcontractor's sole expense unless Subcontractor can clearly establish such was caused by another party.
- 2.4 If Subcontractor uses any Contractor or Owner supplied materials, it shall do so with minimal waste and will reimburse Contractor for unreasonable waste or for the amount that is ruined, damaged, misplaced, or lost while under Subcontractor's control and any costs related to the replacement or supplement of the same. Subcontractor assumes all risk associated with its use of any tools and/or equipment owned or provided by Contractor. Subcontractor shall return any such tools or equipment in as good or better condition than when it was provided to Subcontractor for use, and will be responsible for an equitable portion of Contractor's expense relating to such tools and/or equipment.
- 2.5 Subcontractor shall make all required submittals in a timely and complete fashion. In particular:
  - 2.5.1 Within twenty (20) days from the Effective Date Subcontractor shall submit to Contractor:
    - a) a list of Sub-subcontractors, complete with full contact information and a description of the portion of the Work such Sub-subcontractor will perform. Subcontractor shall enter into a written agreement with all Sub-subcontractors performing any portion of the Work that incorporates this Subcontract and ensures the Sub-subcontractor assumes the same role and responsibility(ies) as Subcontractor. Subcontractor is solely responsible for any Sub-subcontractor and their work. Contractor has the right to contact Sub-subcontractors to discuss the Work, their billing, invoicing, or costs, and to evaluate conformance with this Subcontract. Subcontractor is strictly prohibited from contracting with a Sub-subcontractor in any manner that could cause the Work to exceed the Subcontract Price, including but not limited to on an uncapped time & materials, by-the-piece, or unit basis.
    - b) all shop drawings, cuts, material lists, and other submittals. Contractor's review or approval of such submittals, including samples, mock-ups, or temporary structures (addressed below), shall not: (i) alter the requirements of the Contract Documents for quality, quantity, finish, dimension, design, or configuration, (ii) constitute acceptance by Contractor of any method, material, or equipment not acceptable to Architect or Owner, or (iii) relieve Subcontractor from responsibility for non-conformities, errors, or omissions relating to the Work. Subcontractor has a continual obligation to review shop drawings and submittals to ensure they are complete, accurate, and reflect the conditions in the field. Subcontractor shall include all plan changes, addenda, and Change Orders in all sets of drawings used

## SUBCONTRACT AGREEMENT

MCP Project #: [PROJECT#]

[SUB ENTITY]

Cost Code: [\*\*\*\*\*]-S

in the field, and all drawings will be updated with the latest information and "As-Built" conditions. Subcontractor shall provide any samples, mock-ups, and temporary structures required by Contractor or the Contract Documents within sufficient time for Contractor to submit the same to the Architect and/or Owner within the time stated in the Contract Documents.

- c) a complete schedule of values for the Work, that contains a reasonably detailed division and allocation of the Subcontract Price for the various tasks, scopes, phases, and other Subcontractor requirements. Such schedule of values must be reasonably acceptable to Contractor in content and form, and, once acceptable to Contractor, will be used by Subcontractor as their basis for creating its applications for payment.

**2.5.2** In accordance with the Hazardous and Toxic Substance Act, Subcontractor must submit to Contractor two (2) copies of Subcontractor's Hazard Communications Program and Safety Data Sheets for any hazardous chemicals Subcontractor uses in the performance of the Work and ensure that such sheets are readily available at the Jobsite to Subcontractor personnel performing the Work. Subcontractor is responsible for verifying that all information included therein is always current and in compliance with any party having authority over the Jobsite or the Work, including OSHA.

- 2.6** Subcontractor represents that (i) it is fully qualified, appropriately staffed, properly equipped, sufficiently financed, and otherwise able to perform the obligations of this Subcontract, and (ii) all information provided to Contractor in making its bid and throughout the subcontractor pre-qualification and selection process is complete, true, and accurate. Contractor may terminate this Subcontract for cause immediately upon discovery of Subcontractor's breach of this provision, without providing Subcontractor the ability to cure.
- 2.7** All deliveries shall be coordinated with Contractor's superintendent and materials shall be stored in the location identified by the same. While title for Work will pass upon the earlier of delivery or payment by Contractor, Subcontractor is solely responsible for the protection and safeguarding of its materials, tools, equipment, or other similar items, and retains the risk of loss for such items regardless of the cause.

### **ARTICLE 3: SAFETY**

- 3.1** *Unsafe practices are not permitted*, and Subcontractor shall ensure that all persons performing Work comply with this Article. Subcontractor is solely responsible for the Work's compliance with this Article and Subcontract, including its means and methods of performance and compliance with all Laws. Without displacing Subcontractor's sole responsibility under this Article for Subcontractor Work, Contractor reserves the ability, at Subcontractor's expense, to stop Subcontractor Work and/or implement practices related to this Article.
- 3.2** Subcontractor shall report any injury to personnel performing Work to Contractor within twenty-four (24) hours of occurrence. Subcontractor shall notify Contractor immediately if any third-party (state, city, federal, etc.) arrives at the Jobsite to perform an inspection or if Subcontractor receives a charge, citation, fine, or other similar reprimand in connection with the performance of Work.

### **ARTICLE 4: SCHEDULE**

- 4.1** Subcontractor shall perform Work according to the Schedule, including but not limited to Schedule updates or revisions. Subcontractor is solely responsible for familiarizing itself with the Schedule, Schedule updates, and Project progress; cooperating with Contractor to avoid conflicts or interference with other work and to ensure efficient progress; and, providing Contractor input, suggestions or other information relating to any anticipated difficulties in performing the Work as scheduled. If a change or modification to the Schedule materially impacts Subcontractor's ability to meet the Schedule, then Subcontractor shall notify Contractor within forty-eight (48) hours of Contractor's circulation of the updated Schedule or other written direction. If none is received, then Subcontractor accepts the Schedule and waives all Claims related thereto.
- 4.2** Subcontractor will attend Project related meetings during the performance of the Work or, if not performing Work, when requested by Contractor. Meetings may include pre-installation meetings, progress meetings, and coordination meetings.
- 4.3** Subcontractor shall only be granted schedule, impact and/or coordination adjustments to the extent the Prime Contract grants such a change, at the time and in the manner so made, and pursuant to Subcontractor's adequate showing that an unexpected event beyond its control was sufficiently disruptive to its performance so as to excuse its performance.
- 4.4** If Subcontractor is not making sufficient progress to meet the Schedule, Subcontractor shall, at its sole expense, take additional action(s) deemed necessary to catch-up its Work. Within twenty-four (24) hours of Contractor's notification that additional action(s) are needed to catch-up its Work, Subcontractor shall provide Contractor a recovery plan that establishes how the Subcontractor will perform its Work to meet the Schedule. If the plan is acceptable to Contractor, then it will be implemented immediately and will become part of Subcontractor's obligations of this Subcontract.

### **ARTICLE 5: CHANGES**

Subcontractor shall perform all changes to the Work as required in the Prime Contract to the extent Contractor is obligated to perform same. Contractor may also make additions, reductions, or other changes to the Work. If a change will cause a material increase or decrease in Subcontractor's cost or time for performance, Subcontractor shall so notify Contractor in writing within three calendar days after receipt of Contractor's notice of change, providing a detailed cost breakdown for such increase or decrease. If Contractor agrees with Subcontractor's notice, the Parties will negotiate an equitable adjustment to the Subcontract Price or the time for performance, or both, with the adjustment to be reflected in a Change Order. If Contractor does not agree with the Subcontractor's notice the Contractor shall inform Subcontractor of such disagreement and the parties may work to find a resolution. However, Subcontractor shall proceed with any change as directed in a written authorization from Contractor pending such final agreement. Subcontractor bears the risk of performing any additional, differing, or altered work not supported by a written change directive or Change Order signed by Contractor's Project Manager.

### **ARTICLE 6: PAYMENT**

- 6.1** Subcontractor payment applications must be received by Contractor by the twentieth (20th) of each month. Subcontractor's failure to timely submit an accurate and complete payment application consistent with the schedule of values developed in accordance with this Subcontract will cause such payment application to be excluded from Contractor's applicable billing to the Owner. Such payment application cannot be billed to the Owner until the issues are corrected and as allowed by the Prime Contract billing cycle. As a condition precedent to any payment application Subcontractor must execute this Agreement, make all submittals, supply proof of all insurance and all bonds, as applicable.



## SUBCONTRACT AGREEMENT

MCP Project #: [PROJECT#]

[SUB ENTITY]

Cost Code: [\*\*\*\*\*]-S

- 6.2 Payment applications shall consist of the following: (i) AIA G702S and/or G703S, as applicable, or other prescribed form prescribed by, or acceptable to, Contractor; (ii) fully executed conditional lien waiver, which, unless otherwise required by Law or the Prime Contract, shall be in the form of Exhibit B-1 for each progress payment and Exhibit B-2 with the final payment application; (iii) information required by 6.3, below; and (iv) information required for Contractor to obtain Substantial and/or Final Completion.
- 6.3 Subcontractor shall promptly provide any data, receipts, invoices, or other documents or information as requested by Contractor to verify a payment application. A payment application will need to be supported with additional information if it: (i) does not contain a reasonable distribution of the Subcontract Price, (ii) is for materials or equipment not at the Jobsite (Subcontractor may only include stored materials on a payment application if allowed by the Contract Documents and all requirements of the Contractor or the Contract Documents are met - requirements will include, photographs, bills of lading, and insurance), or (iii) contains a breakdown of line items that cannot be quantified by the Contractor when assessing progress of the Work.
- 6.4 If the Contract Documents require compliance with a scale of wages for the Project, then: (i) Subcontractor shall pay its workmen not less than the scale of wages established in the Contract Documents or, if none is included, then not less than the scale prescribed by law; (ii) notwithstanding anything to the contrary herein, Subcontractor is to make payments at the times prescribed by the Contract Documents or by Law; and (iii) Subcontractor shall prepare and submit required payroll compliance reports.
- 6.5 Contractor shall pay Subcontractor undisputed amounts due within seven (7) business days after receipt of payment from the Owner. Subcontractor accepts the risk of non-payment due to the Owner's failure or refusal to pay and agrees that payment by Owner is a condition precedent to Contractor having any obligation to make payment to Subcontractor. Payment does not constitute or imply acceptance of any part or the whole of the Work.
- 6.6 All payments will first be used for, and constitute trust funds for, payment of Sub-subcontractors. Contractor may issue joint checks to or pay Sub-subcontractors directly from any funds due, or that may be due in the future, to Subcontractor. If, due to Subcontractor's failure to make payment(s), Contractor joint-checks or direct pays any Sub-subcontractor(s), Contractor shall be entitled to recover the damages it incurs. Due to the difficulty to predict and calculate such damages as of the Effective Date, the Parties agree that \$750 per joint-check or direct payment is a reasonable forecast of such damages, and, as such, may be deducted from the Subcontract Price or shall be due to Contractor upon demand if no additional Subcontractor funds remain at the time of such payment(s). This is not a penalty of any sort or character.
- 6.7 Subcontractor shall remove any lien or other Claim made against the Project property or applicable bond for performance of Work upon demand of Contractor or Owner. If Subcontractor fails to remove such lien or resolve such Claim within three (3) calendar days after notice, then Contractor may take any action necessary to resolve the lien or Claim at Subcontractor's sole cost and expense (including court costs, fees, and reasonable attorney fees). To the extent allowed by Law, this provision constitutes Subcontractor's waiver and release of lien rights and/or bond claims it may have for the performance of the Work.

### **ARTICLE 7: DEFAULT, TERMINATION, AND REMEDIES**

- 7.1 If Subcontractor materially defaults on any obligation under this Subcontract and does not cure the default within three (3) calendar days after receipt of Contractor's notice identifying the default, Contractor may: (i) finish the Work by whatever method it deems expedient at Subcontractor's expense, (ii) take possession of and have a lien upon all of Subcontractor's materials, tools, and equipment at the Jobsite, and/or (iii) terminate, suspend or halt Subcontractor's right to perform under this Subcontract, or all of the above in any combination. The foregoing does not waive damages of any sort to which Contractor may be entitled under this Subcontract or at law or in equity. Subcontractor shall have no claim for unperformed or noncompliant Work or for anticipated profit, overhead or other income.
- 7.2 Contractor may, at any time and in its sole discretion, terminate, suspend, or halt Subcontractor's right to perform under this Subcontract. Subject to Subcontractor's compliance with this Subcontract, Subcontractor will recover from Contractor, as the complete and final payment for the terminated Work, the Subcontract, and all related Claims, a sum equal to Subcontractor's direct cost for the Work satisfactorily performed as of the effective date of termination, plus an allowance of three percent (3%) of such direct costs for overhead and profit on such direct costs; Subcontractor shall have no claim for unperformed or noncompliant Work or for anticipated profit, overhead or other income.
- 7.3 Performance of the Work by others under this Article does not relieve Subcontractor of its obligations under this Subcontract including, but not limited to, warranty and indemnification. Contractor's remedies under this Subcontract and existing at law or in equity are cumulative and may be exercised concurrently.
- 7.4 If the Prime Contract is terminated, suspended, or halted for any reason, Contractor shall, at its sole option, have the right to take the same action on this Subcontract without penalty.

### **ARTICLE 8: CLAIMS AND DISPUTES**

- 8.1 Subcontractor must give written notice, with appropriate supporting documentation, of all Claims for extra compensation or additional time for performance of the Work within three calendar days after any event giving rise to the Claim is known, or reasonably should have been known, by Subcontractor. Subcontractor acknowledges that failure of Subcontractor to give Contractor written notice and appropriate supporting documentation within the required time frame constitutes a waiver of all Claims arising out of or related to the event.
- 8.2 By proceeding with the Work, Subcontractor represents that there are no unsuitable existing conditions that will adversely affect the Work and waives any Claim(s) relating thereto.
- 8.3 Contractor may withhold or set-off amounts due under this Subcontract on account of Claims arising out of or related to Subcontractor's breach or reasonably anticipated breach of this Subcontract. If amounts owed by Subcontractor to Contractor exceed the unpaid balance of the Subcontract Price, Subcontractor agrees to pay those amounts within twenty (20) calendar days after receipt of Contractor's notice identifying the amount due.
- 8.4 Disputes arising out of this Subcontract shall first be referred to senior executives of each Party for amicable discussion. Disputes that cannot be resolved amicably within thirty (30) days of such referral shall be resolved through litigation. Unless prohibited by Law, the exclusive venue for any such litigation shall be the District Court of Shawnee County, Kansas. In the event of litigation involving the Work, Subcontractor consents to its Claim being consolidated into any such proceeding; however, if consolidation or joinder is not permitted for any reason, Subcontractor's Claim shall be stayed and enjoined without bond pending resolution. If Subcontractor fails in its indemnification obligations undertaken herein, Contractor hereby reserves the right to settle, in its sole and absolute discretion, all third-party claims regarding the Work at Subcontractor's

## SUBCONTRACT AGREEMENT

MCP Project #: [PROJECT#]

[SUB ENTITY]

Cost Code: [\*\*\*\*\*]-S

expense. If there are not enough funds payable to Subcontractor to cover the settlement and all costs and expenses related thereto, Subcontractor shall pay Contractor such difference immediately upon demand. During the pendency of any dispute, the Parties will continue to proceed with their obligations under this Subcontract.

### ARTICLE 9: ADDITIONAL PROVISIONS

- 9.1 Subcontractor shall meet all insurance requirements set forth in Exhibit C.
- 9.2 To the fullest extent permitted by Law, Subcontractor agrees to defend, indemnify and hold harmless the Indemnified Parties from any and all Claims arising out of: (i) the negligence or willful misconduct of Subcontractor, Sub-subcontractors, or their respective officers, employees and agents; (ii) any violation of Law by Subcontractor, Sub-subcontractors, or their respective officers, employees and agents; (iii) the filing of a lien or other encumbrance on all or part of the Project property by Subcontractor, Sub-subcontractors, or their respective officers, employees, and agents; (iv) all liquidated damages or other delay damages assessed or charged to Contractor by the Owner to the extent they are caused by the Subcontractor, Sub-subcontractors, or their respective officers, employees and agents; and/or (v) any breach of this Subcontract. Nothing contained herein shall be construed to require Subcontractor to indemnify any of the Indemnified Parties from liability, claims, damages, losses, costs, and expenses to the extent proximately caused by such Indemnified Party. The obligations of Subcontractor under this Article shall survive termination of this Agreement and/or final payment hereunder.
- 9.3 This Subcontract was negotiated and jointly drafted by the Parties, and both Parties consent to the use of electronic signatures for the execution of the Subcontract or any other related document in counterparts. All words in this Subcontract shall be deemed to include any number or gender as the context or sense of the applicable provision requires.
- 9.4 Any failure or delay by Contractor in enforcing the terms or obligations of this Subcontract does not waive the terms, Subcontractor's obligation(s), or Contractor's right to enforce such terms and obligation(s).
- 9.5 Except for Subcontractor's warranty and indemnity obligations under this Subcontract, Contractor and Subcontractor will not be liable to each other for loss of profits, loss of use, loss of contracts, loss of opportunity, or for any consequential, incidental, indirect, punitive or exemplary damages arising out of this Subcontract or the Work.
- 9.6 Subcontractor is an independent contractor and is solely responsible for the means, methods, sequences, procedures, and safety used in performance of the Work. Subcontractor has sole responsibility to employ, manage, discharge, and otherwise control its employees and persons performing Work. Subcontractor has no authority to bind Contractor or Owner. No Sub-subcontractor has any third-party beneficiary rights in this Subcontract. Nothing in this Subcontract shall give Subcontractor any third-party beneficiary rights in the Prime Contract.
- 9.7 Subcontractor may not assign all or part of this Subcontract voluntarily, by operation of law, or otherwise, nor may Subcontractor assign any of the money payable under this Subcontract, without obtaining Contractor's prior written consent.
- 9.8 Notifications shall be in such a manner as to ensure and confirm actual, timely receipt of the same. Any oral notification must be reflected in writing promptly after it is made.
- 9.9 If Subcontractor fails to adequately perform the cleaning and clean-up portions of its Work, Contractor may self-perform or hire a third-party to perform such Work at Subcontractor's expense. In either event, Contractor will charge a minimum of one hundred fifty-nine dollars (\$159) per hour for each of its personnel to perform and oversee this portion of the Work, a fee of twenty percent of such cost to cover all overhead expenses related to this Work, and for all other costs incurred, including attorneys' fees.
- 9.10 This Subcontract shall be governed by and interpreted in accordance with the laws of the State of Kansas, excluding provisions which would apply the laws of another jurisdiction. To the extent any provision of this Subcontract is invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of other provisions in, or obligations under, the Subcontract shall not in any way be affected or impaired thereby. In such an event the Subcontract shall be reformed and construed as if such invalid or illegal or unenforceable provision, obligation or part of a provision or obligation had never been contained herein, and such provision, obligation or part shall be reformed so it would be valid, legal, and enforceable to the maximum extent permitted in the jurisdiction.
- 9.11 This Subcontract contains and includes the entire understanding and agreement of the parties. Without exception and regardless of their content or conditionality, all other representations, agreements, conditions, prior proposals, quotes, bids, oral agreements, incorporations by Subcontractor, understandings, and correspondence are hereby superseded and voided by this Subcontract. This Subcontract may be amended only by a written instrument signed by the parties hereto expressly identifying it as an amendment. All documents referenced in or attached to this Subcontract are incorporated herein and are part of this Subcontract. The individuals signing this Subcontract have the requisite authority to take such action.

**EXHIBIT B-1**

**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Progress Payment Application Date: \_\_\_\_\_

Progress Payment Amount: \$\_\_\_\_\_

Total Subcontract Price paid prior to this Progress Payment: \$\_\_\_\_\_

To the extent that good funds under the payment application identified above are delivered and credited on behalf of the undersigned, this document becomes enforceable as a release and waiver regarding the Project (including against its Jobsite) of the undersigned's and all persons performing work on its behalf's (including Sub-subcontractors): mechanic's lien rights; rights under payment and/or statutory bond (whether under state or federal statute or common law); claims for payment under the Subcontract; any right under any ordinance, rule or statute related to claims or payment rights; and, any Claims for knowable damages as of the date of the payment application that have not already been made in writing to Contractor.

This progress payment application identified above includes all labor, services, equipment, or materials furnished to the Project and Jobsite through the date last identified therein, except retention held pursuant to the Contract Documents.

The undersigned warrants that s/he/it will take all necessary steps to ensure that immediately upon delivery and crediting of the funds the undersigned and all persons performing work on its behalf (including the supplying of materials, equipment, etc.) shall honor this release and waiver.

[SUB ENTITY]

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B-2**

**CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

[PROJECT NAME]

Final Payment Application date: \_\_\_\_\_

Final Payment Amount: \$\_\_\_\_\_

Total Subcontract Price paid prior to this Final Payment: \$\_\_\_\_\_

To the extent that good funds under the payment application identified above are delivered and credited on behalf of the undersigned, this document becomes enforceable as a release and waiver regarding the Project (including against its Jobsite) of the undersigned's and all persons performing work on its behalf's (including Sub-subcontractors): mechanic's lien rights; rights under payment and/or statutory bond (whether under state or federal statute or common law); claims for payment under the Subcontract; any right under any ordinance, rule or statute related to claims or payment rights; and, any Claims for knowable damages as of the date of the payment application that have not already been made in writing to Contractor.

This release covers the final payment to the signer for all labor, services, equipment, and materials furnished to the Project and Jobsite, except for retention held pursuant to the Contract Documents.

The undersigned warrants that s/he/it will take all necessary steps to ensure that immediately upon delivery and crediting of the funds the undersigned and all persons performing work on its behalf (including the supplying of materials, equipment, etc.) shall honor this release and waiver.

[SUB ENTITY]

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

-----  
\*THE BELOW SECTION SHALL BE COMPLETED PROVIDED TO CONTRACTOR UPON RECEIPT OF PAYMENT\*  
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**SUBCONTRACTOR'S CERTIFICATION OF FINAL PAYMENT**

By placing my signature below, I, as a duly authorized representative of [SUB ENTITY], certify and confirm the following information is true, complete, and accurate for the applicable Project:

Final Payment date: \_\_\_\_\_

Final Payment identification number: \_\_\_\_\_ (ex. check number, wire confirmation, payment confirmation, etc.)

Final Payment Amount: \$\_\_\_\_\_

Total Subcontract Price paid: \$\_\_\_\_\_

Accordingly, the condition(s) of the applicable Conditional Waiver and Release on Final Payment have been met and fulfilled by Contractor.

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT C: INSURANCE REQUIREMENTS**

- 1) Subcontractor shall obtain, maintain and pay for (at its sole cost) insurance as stated in this Exhibit C, and such other insurance, in such amounts as may be required of Contractor in its contract for the Project or below, whichever is greater.
- 2) Subcontractor shall give Contractor ACORD insurance certificates evidencing such coverages prior to performing Work as a part of a proper application for payment and as a precondition to being eligible to being paid, and as may be requested from time to time. Upon request, Subcontractor shall give Contractor policy information necessary to demonstrate compliance with the insurance requirements but failure of Contractor to demand such certificates or other evidence of full compliance with these insurance requirements, or failure of Contractor to identify a deficiency from insurance evidence that is provided, shall not be construed as a waiver of Subcontractor's obligation to maintain such insurance or liability hereunder. Subcontractor's policies shall comply with this Exhibit, including:
  - a) Contain a provision or endorsement that the coverage will not be cancelled, materially changed, or renewal refused unless the insurer gives at least thirty calendar days prior written notice to Contractor.
  - b) Remain in effect for one year after completion of the Subcontractor Work and acceptance by the Owner.
  - c) Contain a waiver of all rights of subrogation by the insurance carriers in favor of Additional Insureds, except for professional liability and where prohibited by law.
  - d) Comply with all Laws, including, but not limited to, admitted and compulsory coverage.
  - e) All policies shall be written through companies duly entered and authorized to transact that class of insurance in the state in which the Project is located (can be evidenced by an 'all projects' and/or 'all locations' endorsement). The insurance companies must have an A.M. Best rating of A- or better in the most recent Best's Key Rating Guide.
  - f) Except for Professional Liability Insurance all liability policies must be an occurrence form.
- 3) The insurance requirements for the a are:
  - i) **Commercial General Liability Insurance** on a CG 0001 04/13 occurrence form (or form that provides equivalent coverage) with a per project aggregate endorsement. Such policy shall provide protection for the hazards of (i) construction operations, (ii) subcontractors and independent contractors, (iii) products and completed operations (to remain in force for two years following project completion or the length stipulated in the Prime Subcontract, whichever is longer), (iv) explosion and collapse, and (v) contractual liability and personal injury. No exclusion(s) or endorsement(s) that limit coverage for Work, specifically Residential Construction Exclusion or Subcontracted Work Exclusion, shall be included. Subcontractor shall maintain policy limits of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate.
  - ii) **Automobile Insurance** protecting against all claims for injuries to members of the public and damage to property of others arising from the use of all owned, non-owned and hired motor vehicles in conjunction with the performance of Work, including all owned. Such policy and shall have minimum combined single limit of \$1,000,000 per occurrence. If hauling of hazardous waste is part of the Scope, Automobile Liability Insurance with a \$1,000,000 combined single limit per occurrence for bodily injury and property damage applicable to all hazardous waste hauling vehicles and include MCS 90 endorsement and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Business Automobile).
  - iii) **Workers Compensation Insurance** protecting Subcontractor against all claims under applicable worker's compensation laws, including, but not limited to, the United States Longshoremen's and Harbor Worker's Act and the Jones Act. Subcontractor shall also maintain **Employers Liability Insurance** (including occupational disease) protecting Subcontractor against claims for injury, disease or death of employees which are not covered by workers compensation insurance. Subcontractor shall maintain workers compensation limits as required by statute and employer's liability limits of at least \$500,000 for each accident, each disease, and for each employee for disease.
  - iv) **Umbrella Liability Insurance** that follows the form of and protects against claims in excess of required limits of, the Commercial General Liability Insurance, the Employer's Liability Insurance and the Automobile Liability Insurance. Subcontractor shall maintain policy limits of at least \$3,000,000 per occurrence and \$3,000,000 aggregate. All coverages and terms required under the Commercial General Liability, Automobile Liability and Employer's Liability must be included on the Excess/Umbrella Liability policy. Higher limits may be required by Contractor or Owner on a project-by-project basis. Subcontractor's Excess/Umbrella Liability Policy shall provide liability coverage, subject to the terms and conditions of the policy, in excess of all available underlying coverage before any primary or excess coverage held by any Additional Insured.
  - v) If the Work includes engineering, design, architectural and/or professional services, then Subcontractor shall maintain **Professional Liability Insurance** with policy limits of at least \$1,000,000 per occurrence and \$1,000,000 aggregate.
  - vi) If the Work includes environmental services, building enclosure systems, plumbing, heating, ventilation, air conditioning, drywall, insulation, building foundations, or any work which includes Microbial Matter, Mold, Fungi, or Bacteria, or involves the use of hazardous materials, the Subcontractor must provide and maintain **Pollution Liability Insurance** that includes coverage for, but not limited to, Claims arising out of all hazardous material and hazardous waste remediation, storage, transportation, clean-up and disposal. This policy must include contractual liability coverage aligned with Subcontractor's indemnification obligations. The policy limits shall be at least: \$1,000,000 each occurrence and aggregate.
  - vii) If required by Contractor or not covered by the Builders Risk insurance, Subcontractor shall obtain an **Installation Floater** to cover that portion of the work to be constructed, installed, altered, or repaired by Subcontractor. If Contractor or Owner, or other party as required by the Prime Contract, have a financial interest, those parties shall be listed as a loss payee.

viii) If the scope involves the rigging, hoisting, lowering, raising or moving of property or equipment belonging to others and **Riggers Liability Insurance** is required to insure against physical loss or damage to the property or equipment. Such coverage can be obtained and provided through an endorsement on the Commercial General Liability policy or through a standalone policy.

- 4) **Additional Insureds:** The following insurance policies shall name the Owner, Contractor, Architect, and the parent companies, related companies, affiliated companies, subsidiaries, successors, and assigns of each, including the respective shareholders, officers, directors, partners, employees, and agents of each and any other person or organization as required by the Contract Documents as additional insureds (“Additional Insured”): Commercial General Liability, Commercial Auto Liability, Commercial Umbrella, and Pollution Liability. Coverage shall be primary and non-contributory to any insurance maintained by any Additional Insured and any other parties as required by Prime Contract, all of which shall be stated on the Certificate of Insurance provided by the Subcontractor. The additional insured requirement may be satisfied by a blanket endorsement requiring all that all parties required in a written contract be included as additional insureds.

The Commercial General Liability Additional Insured endorsement(s) shall provide:

- a) That any person or organization that Subcontractor is required to add as an Additional Insured under the contract or agreement shall be included as an Additional Insured (CG 20 38 04 13 or its equivalent).
  - b) The additional insured endorsement shall not limit the exception to the exclusion for “damage to your work”- coverage shall include coverage for damage to the work itself for completed operations performed by Sub-Subcontractor.
- 5) The Commercial General Liability Additional Insured Endorsement must provide status in favor of Additional Insureds including both Ongoing and Completed Operations and shall be broad enough to cover the risk and liabilities assumed in this Subcontract. Vicarious forms of additional insured endorsements will not be accepted. Evidence, by endorsement or policy language, of additional insured and primary and non-contributory coverage must be provided with the certificate of insurance for General Liability.
- 6) Subcontractor shall ensure that its Sub-subcontractors obtain, maintain, and keep in force coverages of the same type and amounts as required of Subcontractor, naming the same additional insureds.
- 7) By requiring insurance as set out herein, Contractor does not represent that coverage and limits will necessarily be adequate to protect Subcontractor, and such coverage and limits shall not be deemed as a limitation on Subcontractor’s potential liability. Approval, disapproval, or failure to act by the Contractor regarding any insurance supplied by or on behalf of the Subcontractor shall not relieve the Subcontractor of full responsibility or liability for damages and accidents, neither shall the bankruptcy, insolvency, or denial of liability by the insurance company relieve the Subcontractor from liability.



**SUPPLEMENTAL CONDITIONS: ATTACHMENT B**  
**PURCHASE ORDER SAMPLE**



Purchase Order No. \_\_\_\_\_

Project Title: \_\_\_\_\_

TO:

3501 SW Fairlawn Rd.,  
Topeka, Kansas 66614  
785.273.3882

ATTN:

=====

Project Name: \_\_\_\_\_

Project Owner: \_\_\_\_\_

Project Number: \_\_\_\_\_

Project Architect: \_\_\_\_\_

Ship to:

Bill to:

3501 SW Fairlawn Road  
Topeka, Kansas 66614

In Care of:

Attention:

Delivery Date:

**Please contact Superintendent 24 Hrs. prior to delivery.**

Delivery is required in accordance with the Project Schedule, Contract Documents and the direction of the Project Superintendent. All Freight is prepaid unless otherwise specified below.

Includes the Bid Documents and Architectural Specifications dated \_\_\_\_\_ and any and all referenced codes and standards. Submittals shall be submitted for review within 10 days of issuance of this Purchase Order. Electronic submittals are required.

Upload Submittals to Procore. Your contact for help is:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10

(Purchase Order **Includes** KS Sales Tax).

Total:

\_\_\_\_\_  
We accept the above order, including the terms and conditions hereon and those included below.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## CONDITIONS OF PURCHASE

1. This order may only be accepted on the exact terms set forth herein and no additional terms or modifications will be agreed to. The conditions and provisions of this order shall constitute the entire agreement of the parties as to the goods, materials and products described herein, and shall supersede all previous agreements, conditions, proposals or offers of the party as pertains to the performance of this purchase order.

2. Vendor acknowledges he is bound to the Contractor by all terms of all contract documents that form a part of the contract, by reference or otherwise, and assumes toward the Contractor all the obligations and responsibilities that the Contractor assumes therein toward the owner, insofar as they are applicable to the materials, equipment, workmanship and transportation furnished under this purchase order.

3. Vendor warrants that materials and equipment furnished under this purchase order fully meet the requirements of the contract or said materials and equipment have been specifically approved as provided for in said contract.

4. In the event any materials or equipment delivered under this purchase order are unacceptable under the contract, the contractor may, at its option in addition to any other remedies provided by law:

- a. Reject the defective materials or equipment, return the same to Vendor at Vendor's expense and cancel all or any portion of this purchase order with no liability on the part of the contractor.
- b. Require Vendor to remove and replace the defective materials or equipment or to make the necessary corrections or modifications to completely satisfy the contract all at Vendor's expense.
- c. Make the necessary corrections or modifications to the defective materials or equipment, or replace them, to completely satisfy the contract all at Vendor's expense if Vendor does not act promptly to satisfy the contract. The contractor will be the sole judge of the promptness required to prevent delay in the completion of the work in the contract. Vendor shall pay to the Contractor all loss or damage resulting from Vendor's failure to supply materials or equipment acceptable under the contract. All such charges may be withheld by the Contractor from amounts due Vendor, at the Contractor's option.

5. Vendor shall provide guarantees as specified in the contract, or if no guarantee is specified therein, then provide a guarantee to replace without cost to the Contractor or to the Owner, any defective or non-conforming material or equipment or remedy without cost to the Contractor or to the Owner any latent defects not due to ordinary wear and tear or not due to improper maintenance or operation, which may develop within one year of acceptance by the Owner. Said acceptance by the Owner and/or payment for materials or equipment by the Contractor shall not relieve Vendor from guarantee provisions.

6. Time is of the essence of this purchase order. Shop drawings, samples and other items required by the contract shall be submitted to the Contractor in accordance with the schedule specified in the purchase order.

Materials and equipment shall be shipped so as to be received by the Contractor by the date or dates specified in the purchase order. In the event that Vendor fails to meet those schedule dates or delivery dates, the Contractor may, at its option, in addition to any other remedies provided by law:

- a. Cancel all or any portion of this purchase order with no liability on the part of the Contractor, and purchase on the open market the materials or equipment which have not been delivered by the specified date or dates, (or for which the shop drawings, samples, or other items have not been received on schedule). Any and all costs to the Contractor over and above the price specified in this purchase order shall be reimbursed to the Contractor by Vendor,
- b. Require Vendor to reimburse to the Contractor any and all liquidated damages collected from the Contractor by the Owner, which are attributable to or caused by Vendor's failure to meet the specified delivery date or dates; and in addition, whether or not such liquidated damages are so collected, require Vendor to pay to the Contractor any and all other additional damages the Contractor may sustain, attributable to or caused by Vendor's failure to meet his obligations under this purchase order, including, but not limited to, the cost of improvisations in the performance of his work, and additional overhead and expense and equipment rental related to such delay.

7. Prices stated in this purchase order are not subject to escalation unless so stated.

8. Vendor shall not assign this purchase order nor subcontract any portion of the work hereunder, to include shop drawings, without prior written consent of the Contractor.

9. Vendor warrants that there are no known claims against it for unpaid labor, materials, equipment or other charges, for which payment is sought from the Contractor. Contractor may, at its option make payments for labor or material jointly to the Vendor and any person, firm, or corporation to whom the Vendor is indebted for labor performed or material furnished in the performance of this purchase order.

10. The Contractor and Vendor agree to be bound by the mandatory contract provisions as required by K.S.A. 44-1030(a) paragraphs (1)-(4) and the same shall be incorporated herein as if set out fully. (The provisions of this paragraph are only applicable to contracts of the State of Kansas or other political subdivisions of the State of Kansas as defined in K.S.A 44-1030(a).

11. PATENT RIGHTS. The Vendor, by acceptance of this order agrees to indemnify and hold the purchaser harmless from all liability direct or indirect for patent infringement and from any other claim for damages in which the Vendor may be involved affecting the material herein specified, and to defend all suits against the purchaser involving any such claims.

12. Other conditions: -----

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

