

## AC CORPORATION

### TERMS AND CONDITIONS FOR MATERIAL AND EQUIPMENT PURCHASE ORDERS

**PURCHASE ORDER:** The purchase order issued by AC Corporation (ACC) to the vendor of the equipment and/or products ordered (Seller) consists of ACC's signed purchase order form, these terms and conditions, and all plans, specifications, drawings, exhibits, attachments, and contract documents presented by ACC as part of the purchase order, each of which is an integral part of the contract between ACC and Seller applicable to such equipment and/or products. Except to the extent expressly agreed upon by ACC and Seller in writing, no term or condition made or proposed by Seller in its acceptance shall be binding upon ACC if it is in conflict with, inconsistent with, or in addition to the terms of the purchase order in general or these terms and conditions in particular, and any statement in Seller's acceptance to the contrary shall be void.

**ACCEPTANCE:** This purchase order must be accepted by Seller in its entirety and not in part. Seller shall be deemed to have accepted this purchase order upon the earlier of: (a) ACC's receipt of written acknowledgment of this purchase order from Seller indicating Seller's acceptance; or (b) Seller's delivery of any of the products ordered by ACC pursuant to this purchase order.

**PRICE:** Seller's quoted price shall include all packaging, shipping, transportation, freight, taxes, and insurance costs.

**CHANGES:** ACC may at any time by written change order make changes to this purchase order, including the types and quantities of items ordered and the delivery schedule, and Seller shall proceed immediately to perform this purchase order as changed. Upon issuance of a change order, an equitable adjustment shall be made in the price or delivery schedule or both, to the extent necessary and agreed upon by ACC and Seller. In no event, however, shall Seller withhold delivery pending agreement on such equitable adjustment.

**INSPECTION AND CERTIFICATIONS; BUILDING CODES:** All ordered products and work shall be subject to inspection and tests and shall be certified by Underwriters Laboratories or by a third party certification agency pre-approved by ACC and shall be compliant with the local building codes for the project where Seller's products are to be installed.

**PAYMENT:** ACC will make payment pursuant to the terms set forth on the purchase order following receipt of an approved invoice and after final inspection and acceptance by ACC. As a condition to any payment, Seller may be required to release all liens and claims pursuant to a lien waiver suitable to ACC. Payment shall not constitute or imply final acceptance of the products or work.

To be entitled to payment for the products provided under this purchase order, Seller shall deliver all invoices to ACC no later than ninety (90) days following the last furnishing of labor, materials, or equipment by Seller under such purchase order (expressly excluding warranty obligations), or else be forever barred from further payment. Any such invoice received by ACC after such 90-day period shall be void and shall not be payable by ACC, notwithstanding ACC's receipt and acceptance of such materials or equipment. In the rendering of invoices hereunder, time is of the essence.

**TERMINATION:** ACC may terminate this purchase order, in whole or in part, for ACC's convenience at any time upon written notice to Seller. Upon any partial termination, an equitable adjustment shall be made in the price or delivery schedule or both, to the extent agreed upon by ACC and Seller.

**DELIVERY:** Time of delivery is of the essence. Seller shall promptly notify ACC of any actual or anticipated delay in delivery. Shipments shall be strictly in accordance with the delivery schedule set forth in this purchase order. Seller shall not manufacture equipment, make production arrangements, or perform work in advance of the period reasonably required to meet the stated delivery schedule. No claim shall be allowed for such advance effort in case of change or termination. ACC reserves the right to return all products received in advance of the delivery schedule at Seller's expense, to store the products at Seller's expense, or to hold such products and pay invoices on such shipment on normal maturity after the scheduled delivery date.

**TITLE AND RISK OF LOSS:** Title to and all risk of loss of or damage to products to be delivered hereunder shall remain with Seller until such items are accepted by ACC.

**HAZARDOUS MATERIALS:** Seller shall notify ACC in writing if any product ordered is subject to laws or regulations relating to hazardous or toxic substances. Seller shall furnish all appropriate shipping certifications and instructions for shipping, safety, handling, exposure, and disposal in a form sufficiently clear for use by ACC's non-technical personnel and sufficiently specific to identify all action which the user must take concerning the products. The following certification must be made on the bill of lading: "This is to certify that the above named items are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to any applicable transportation regulations."

**PATENT INDEMNITY:** Except insofar as this purchase order calls for items in accordance with ACC's detailed design, Seller agrees to indemnify and save harmless ACC and its customers and other users of its products from all loss, damage, liability, claims, and suits including costs and attorneys' fees for or on account of alleged infringements of any United States and foreign patents, copyrights and trademarks.

**WARRANTY:** Seller warrants products manufactured or supplied by Seller to be free from defects in material and workmanship under normal or specified use and service. Seller also warrants that products ordered to ACC's specifications will conform thereto and to any drawings, samples, or other descriptions furnished by ACC, and, if ordered to Seller's design or descriptive

literature, will be fit and sufficient for the purpose intended. These warranties shall run to ACC, its successors, assigns, and customers and shall extend for the term of ACC's construction warranty on the project where Seller's products are installed or for one (1) year after the customer's final acceptance of ACC's work at the project where Seller's products are installed, whichever is later. Any cost or expense, including reasonable attorneys' fees, incurred by ACC or its customer in enforcing this warranty shall be borne by Seller.

**DRAWINGS, SPECIFICATIONS, AND TECHNICAL INFORMATION:** Drawings, data, design, inventions, and other technical information supplied by ACC in connection with this purchase order shall remain ACC's property and shall be held in confidence by Seller.

**ASSIGNMENTS:** Seller shall not assign or delegate any portion of this purchase order to another supplier without ACC's prior written consent. ACC reserves the right to assign this purchase order to its customer. Amounts due to Seller or its assignee shall be subject to reduction or set off for any present or future claims which ACC may have against Seller, its divisions, subsidiaries, or affiliates.

**INDEMNIFICATION:** To the fullest extent permitted by law, Seller shall indemnify, defend, and hold harmless ACC and its consultants, agents and employees from and against all claims, liabilities, damages, losses, costs, and expenses (whether or not attributable to third party claims), including reasonable attorneys' fees, arising out of or resulting directly or indirectly from defective performance or nonperformance of Seller's product or work, breach of or failure to perform Seller's obligations under this purchase order, breach of warranty by Seller, actions deemed necessary due to the insolvency or bankruptcy of Seller, or negligent act or omission or intentional misconduct of Seller or any employee or contractor employed or engaged by Seller, including without limitation any loss or expense attributable to bodily injury, disease, death, injury to or destruction of tangible property, contractual liability, or any other form of monetary damage or cost of cure incurred by ACC. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity that would otherwise exist by law. The indemnification obligation under this section shall not be subject to any limitation on amount or type of damages and shall survive the expiration or termination of this purchase order.

**START UP DUTIES; INSURANCE:** In the event Seller has start-up, testing, adjusting or other responsibilities at the customer's or ACC's work site, such work shall be performed by Seller in a good and workmanlike manner in accordance with the work schedule and, at ACC's request, Seller shall maintain commercial general liability (including contractual legal liability), automobile, property damage and workers compensation insurance in the amount required in the contract between the customer and ACC but no less than \$1,000,000 for each coverage. Seller shall, at ACC's request, cause ACC and its customer to be named as additional insureds under such insurance coverage and shall deliver certificates evidencing such insurance coverage to ACC upon request. The certificates shall contain a provision that coverage will not be canceled or allowed to expire until at least 30 days prior written notice has been given to ACC.

**COVENANT NOT TO COMPETE OR DISCLOSE:** Seller acknowledges that ACC has an established business relationship with the owner of the project where Seller's products are to be installed and will have the opportunity for a continuing business relationship with that owner that may result in future work, service, and maintenance agreements for ACC. In consideration of this purchase order, Seller hereby agrees that Seller will not, for three (3) years following delivery of Seller's products under this purchase order, solicit, negotiate or appropriate for itself work, service, sales, or maintenance agreements with the said owner and will not interfere with ACC's prospects for work with such owner without the express written consent of ACC. In addition, Seller shall hold confidential all information pertaining to this work and shall not disclose any information without the express written consent of ACC.

**COMPLIANCE:** Seller shall comply with all applicable Federal, State, and local laws, orders, regulations, and ordinances in performing this purchase order. Seller agrees to indemnify and save and hold ACC harmless from and against any and all claims, liabilities, costs, damages, and expenses (including reasonable attorneys' fees) suffered or occasioned to ACC through any failure of Seller to comply with any such laws, orders, regulations, or ordinances.

**APPLICABLE LAW:** This purchase order shall be construed and interpreted solely in accordance with the laws of the State of North Carolina.

**ATTORNEYS' FEES; CURE COSTS:** In the event either ACC or Seller (the "Breaching Party") shall breach or otherwise fail to perform any of its obligations under this purchase order, the other party shall be entitled to recover from the Breaching Party all reasonable attorneys' fees and expenses incurred in enforcing its rights under this purchase order. In addition, upon any such breach or nonperformance, the other party shall be entitled to recover from the Breaching Party all remediation, mitigation, and cure costs incurred by the other party arising therefrom, including internal administrative costs.

**COMPLETE AGREEMENT:** The terms and conditions of this purchase order set forth the entire agreement between ACC and Seller relating to the materials and equipment ordered and supersede all previous communications, representations, or agreements, whether oral or written, between the parties hereto with respect thereto.

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#### AFFIRMATIVE ACTION STATEMENT

If applicable to this purchase order, the Affirmative Action Clause for Handicapped Workers (41 C.F.R., Section 60-741.4), the Equal Opportunity Clause in Section 202 of Executive Order #11246 and the Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era (41 C.F.R., Section 60-250.4) are hereby incorporated herein by reference.