



## STANDARD TERMS AND CONDITIONS OF PURCHASE

**NOTE: WHETHER CONSTRUED AS AN OFFER, ACCEPTANCE, OR CONFIRMATION, THESE TERMS AND CONDITIONS OF PURCHASE INCLUDE ALL DOCUMENTS AND EXHIBITS ATTACHED HERETO INCLUDING, WITHOUT LIMITATION, THE PURCHASE ORDER, THE SUPPLEMENTAL TERMS AND CONDITIONS OF PURCHASE FOR ON-SITE SERVICES (IF APPLICABLE), EXHIBIT A (COLLECTIVELY, THE "ORDER"), AND ALL OTHER TERMS INCORPORATED BY REFERENCE HEREIN (COLLECTIVELY, THE "TERMS AND CONDITIONS"). THESE TERMS AND CONDITIONS SHALL CONSTITUTE THE FINAL, COMPLETE, AND EXCLUSIVE STATEMENT OF THIS CONTRACT AND MAY NOT BE MODIFIED OR RESCINDED EXCEPT BY A WRITTEN CHANGE ORDER ISSUED BY THE PURCHASER. IF THESE TERMS AND CONDITIONS CONSTITUTE AN OFFER BY THE PURCHASER TO PURCHASE THE GOODS AND/OR SERVICES SPECIFIED UPON THE TERMS AND CONDITIONS AND AT THE PRICE(S) AND WITH THE DELIVERY DATE(S) HEREIN, SELLER SHALL INDICATE ITS ACCEPTANCE OF THESE TERMS AND CONDITIONS BY VERBAL ACCEPTANCE COMMUNICATED TO THE PURCHASER, BY WRITTEN ACCEPTANCE ON THE FACE OF THE ORDER RECEIVED BY THE PURCHASER, BY OTHER WRITTEN CONFIRMATION RECEIVED BY THE PURCHASER, BY COMMENCING WORK ON THIS ORDER IN ANY MANNER, EXPRESSLY CONDITIONS ON NOTICE OF SUCH COMMENCEMENT OF WORK RECEIVED BY THE PURCHASER, OR BY THE DELIVERY OF THE GOODS AND SERVICES WITHIN THE TIME FOR SUCH DELIVERY AS STATED IN THE ORDER. AS AN OFFER THESE TERMS AND CONDITIONS EXPRESSLY LIMIT ACCEPTANCE OF THE OFFER TO THESE TERMS AND CONDITIONS, AND NOTIFICATION OF OBJECTION TO ANY DIFFERENT OR ADDITIONAL TERMS IN ANY RESPONSE TO THIS OFFER FROM SELLER IS HEREBY GIVEN. IF THESE TERMS AND CONDITIONS ARE CONSTRUED AS AN ACCEPTANCE OF SELLER'S OFFER, THIS ACCEPTANCE IS EXPRESSLY CONDITIONED ON THE OFFEROR'S ASSENT TO ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN THESE TERMS AND CONDITIONS. IF THESE TERMS AND CONDITIONS ARE CONSTRUED AS A CONFIRMATION OF AN EXISTING CONTRACT, THE PARTIES AGREE THAT THESE TERMS AND CONDITIONS CONSTITUTE THE FINAL, COMPLETE AND EXCLUSIVE TERMS AND CONDITIONS OF THE CONTRACT BETWEEN THE PARTIES. REGARDLESS OF ITS CONSTRUCTION AS AN OFFER, ACCEPTANCE, CONFIRMATION OF AN ORDER FOR GOODS OR SERVICES THESE TERMS AND CONDITIONS INCORPORATE BY REFERENCE ALL TERMS OF THE UNIFORM COMMERCIAL CODE PROVIDING ANY PROTECTION TO PURCHASER, INCLUDING WITHOUT LIMITATION, ALL EXPRESS AND IMPLIED WARRANTY PROTECTION AND ALL PURCHASER REMEDIES UNDER THE UNIFORM COMMERCIAL CODE.**

1. Time of delivery of this Order is of the essence, and Purchaser reserves the right to cancel, without cancellation charges, all or any part of this Order if not filled within the specified time. Exercise of such right of cancellation shall not be deemed a waiver of any other right reserved to the Purchaser herein, or by law, for any delay or failure to deliver as specified. If delivery is delayed by a force majeure event, Seller shall give written notice to Purchaser no later than five (5) days after such force majeure event and such notice shall include a description of the particulars and the estimated duration of the force majeure event. The time for Seller's performance may be extended for a period equal to the time such performance is delayed, but such relief shall be conditioned upon Seller's initial and continued satisfaction of notice, reporting, remedy and mitigation requirements of this Order. Under no circumstances shall Seller be entitled to an adjustment of the Order price by virtue of the force majeure event. For purposes of this Order, "Force Majeure Event" means any cause beyond the reasonable control of, not reasonably foreseeable by, and not due to the fault of the Seller, including, but not limited to, any act of God; act of civil or military authority; act of war; civil disturbance; severe inclement weather conditions atypical for the location and/or season; flood; or embargo. "Force Majeure Event" does not include (a) shortages or late delivery of materials, equipment, supplies or labor required for the design, manufacture of the material, equipment, or services furnished under this Order (collectively, the "Work"), (b) the acts or omissions of Seller or its suppliers (except and only to the extent that such act or omission of such supplier would itself be excused as being a Force Majeure Event), (c) strikes or work stoppages, or (d) economic hardship. If liquidated damages are included as a part of the contract between Purchaser and its customer and this Order is entered into pursuant to that contract, in the event Purchaser is obligated to pay liquidated damages to Purchaser's customer or owner, then Purchaser may assess same against Purchaser in proportion to Seller's share of the responsibility for such delays and Seller agrees to indemnify and reimburse Purchaser to the extent that any delays were caused by the acts or defaults of Seller. In addition, Seller shall also be liable for all additional damages Purchaser may incur as a result of Seller's failure to complete Seller's work and Purchaser shall be entitled to recover from Seller all actual costs, expenses or damages incurred by Purchaser as a result of Seller's failure to perform timely, one portion of said actual damages which shall constitute the liquidated damages chargeable to Seller for Seller's share of the responsibility for any delays.
2. All Work covered by this Order shall be subject to, at reasonable times, inspection and testing by Purchaser, or the Purchaser's customer, before, during and after manufacture, installation or commissioning. Seller shall include in all suborders a statement providing for inspection rights by Purchaser or the Purchaser's customer. Seller shall notify Purchaser at least three (3) business days prior to the performance of any factory tests or the occurrence of other events identified as witness and hold points set forth in this Order if the tests or events will occur in a facility located in North America. If the tests or events will occur in a facility located outside North America, then

Seller shall notify Purchaser at least seven (7) business days prior to the occurrence of such tests or events. If Purchaser arrives at the Seller's facility, or other location where inspection and/or testing will occur, and the material and/or equipment is not ready for inspection and/or testing, all increased costs incurred by Purchaser in the trip to such location shall be reimbursed by Seller.

3. The price of this Order is not subject to change or surcharges of any kind resulting from the imposition now or in the future of any sales or use taxes or import/export duties unless expressly set forth herein. It is further agreed that, notwithstanding any contrary provision of the specifications, Seller shall not be entitled to any cost or price escalation except to the extent expressly set forth in this Order. If prices in effect at the date of acceptance of this Order are reduced prior to the date of delivery or performance, or if Seller lowers prices to other purchasers under similar conditions and in similar quantities before delivery, Seller agrees to afford to Purchaser the benefit of such reduction or lower prices. This Order may not be filled at a higher price than last quoted or charged without Purchaser's prior written consent. If no price is specified, the price is to be the price of the last delivery to Purchaser.
4. In the event the contract of Purchaser with Purchaser's Customer or Owner or another contractor is terminated, cancellation of this Order shall occur automatically, without cancellation charges, by the Seller, and no obligation of any description whatsoever shall exist on the part of the Purchaser toward the Seller. Furthermore, Purchaser shall have the right, at any time and at its sole discretion, to terminate this Order, in whole or in part, for its convenience, by giving written notice to Seller specifying the extent to which this Order is terminated and the effective date of such termination. Seller shall discontinue performance of the Work under this Order to the extent that the notice so specifies, but shall continue to perform any portion of the Work not terminated. If the Purchaser exercises its right to terminate without cause, Seller shall promptly assign to Purchaser, in form and in content satisfactory to Purchaser, Seller's rights, title and interest to the goods purchased for or committed to the terminated Work (whether completed or in progress) and to work-in-progress and completed Work. Subject to Seller's compliance with the above provisions, Seller shall recover from Purchaser, as complete, full and final settlement for such terminated Work, a sum equal to its actual direct cost for the terminated Work delivered as of the date of termination. Any payment to Seller for terminated Work shall be less any amounts previously paid to Seller on account of such terminated Work. Should termination without cause be preceded by a suspension of the Work, the parties agree that any cost and schedule impacts associated with suspension will be excluded from any calculation of costs for termination hereunder. In no event shall Seller be entitled to any prospective, anticipated, or loss profits or any damages of any type with respect to the terminated portion of the Work. If Purchaser terminates this Order for Seller's default, Seller shall be responsible for all damages caused by its default, including, but not limited to, extra costs for Purchaser to procure material, expenses incurred in inspection, receipt, transportation, care, and custody of rejected goods, any charges, expenses, or commissions in connection with affecting cover, administrative costs, and attorneys' fees.
5. The Contract price appearing on this Order is final as to payment for the Work covered by this Order, as defined by the enumerated specification paragraph numbers, with exceptions as noted, and there shall be no additions to or other modifications of such Contract price, except as such modifications may result from actual change in the specifications or such reductions required by Section 4 above. If such changes become necessary, any alteration of the Contract price shall be covered by separate order, which shall be issued to cover such changes. Seller shall not proceed with changes affecting Contract price without specific authorization in WRITING from the Purchaser.
6. Seller agrees as follows: (1) to pay all Federal and State taxes on the payroll of its employees under the terms of the various old age, unemployment or pension benefits now enacted or which may be enacted prior to completion of this Order; (2) to carry and pay for the insurance requirements as listed in Exhibit A of this Order; and (3) to abide by and comply with all Federal and State laws and regulations concerning employment, wages and hours of employees engaged in the Work, and agrees to defend and indemnify the Purchaser and save Purchaser harmless from all claims which may be made against it by an employee or employees or Governmental Agencies as a result of Seller's failure to comply with such Federal and State laws and regulations.
7. Seller represents and warrants to Purchaser that all Work performed under this Order meets all standards of the Occupational Safety and Health Act of 1970 and Construction Safety Act of 1969, as amended, and of applicable State and Local laws and regulations pertaining to safety. The Seller agrees to defend, indemnify and hold Purchaser harmless of and from any loss, including but not limited to any fines, penalties and corrective measures Purchaser may sustain by reason of Seller's failure to comply with said laws or regulations in connection with the Work.
8. Seller represents and warrants that all Work performed pursuant to this Order (a) strictly conforms to the specifications, drawings, data, samples, or other descriptions furnished or specified by Purchaser; (b) are new, merchantable and free from defect in material, workmanship and design, and are fit for their intended purposes; (c) are free of liens or claims by any third party; and (d) the Work including any equipment, materials or Services provided do not infringe on any intellectual property rights of a third party. Work not in accordance with this Order may be rejected and returned by Purchaser at Seller's risk and expense. Payment for non-conforming Work shall not constitute acceptance thereof, or limit or impair Purchaser's right to assert any legal or equitable right or remedy. No substitutions, alterations or modifications to the specified or approved Work pursuant to this Order will be allowed without the prior written consent of Purchaser. Seller shall promptly repair, replace or correct any Work not conforming to the above warranties, without expense to Purchaser. If Seller fails to correct defects in or replace non-conforming Work promptly, Purchaser may repair, replace or correct such Work and charge Seller for the cost incurred by Purchaser for doing so. Purchaser's acceptance of delivery, inspection, final inspection or payment for any Work does not waive any warranties. Seller hereby waives the benefit of reliance on course of performance, course of dealing and trade usage in its performance under this Order.
9. All Work furnished under this Order shall be subject to the approval of the Purchaser's customer, Owner, architect, engineer, or any other party designated in the specifications, and Seller shall furnish the required submittal data and/or number of samples for said approval. In the event such approval is not obtained, this Order shall be deemed to be cancelled, with no liability on the part of either Purchaser or Seller. Seller agrees to be bound to the Purchaser by all terms of the contract between the Purchaser, the Purchaser's customer and the Owner to the extent applicable to the Work. If the Work does not meet the plans and specifications of the relevant project, Seller shall, upon receipt of notice, immediately replace the same, or remedy any deficiency, without expense to the Purchaser; and further, Seller shall

pay to Purchaser all loss or damage resulting therefrom. Purchaser shall have the right to backcharge Seller for the costs that Purchaser incurs in performing any corrective work required to remedy the Seller's non-performance. The backcharge may include, but is not limited to, engineering, labor, material, transportation, insurance, subcontracts, tools and equipment. In addition, an allowance of 25% of the direct cost will be added for Purchaser's overhead, supervision and administrative costs.

10. To the fullest extent permitted by law, the Seller shall indemnify and hold harmless the Purchaser, its officers, directors, employees and all others whom Purchaser is obligated to defend and indemnify (collectively, the "Indemnitees") from and against all claims, damages, losses and expenses, including, but not limited to, reasonable attorneys' fees, arising out of or resulting from the performance of this Order including but not limited to claims, damages, losses and expenses arising out of bodily injury or death, property damage, breach of warranty, product liability claims, liens and encumbrances on the goods covered hereby, or Seller's failure to comply with this Order, or the requirements of any applicable law, rule, regulation, ordinance or governmental matter, but only to the extent caused by the negligence, willful misconduct, or acts or omissions of the Seller, the Seller's subcontractor, or anyone directly or indirectly employed by them. This indemnification extends to actual or alleged infringement of letters patent, or of any litigation based thereon covering any article purchased. The obligations of this Section shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise be available to the Purchaser. Seller understands and agrees to undertake these obligations regardless of whether the injured person asserting a suit or claim is an employee of Seller, its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Seller's indemnity obligation under this Section shall not be limited in any way by the operation of a workers' or workmen's compensation act, any disability act, or any other employee benefit act. Seller further agrees to obtain, maintain and pay for commercial general liability insurance which conforms to the requirements of this Order and such other insurance types and limits as are specifically required by this Order, to secure the provisions of this Section. Seller and Purchaser agree that this Section complies with the requirements of WIS. STAT. § 895.447.
11. Seller shall maintain the insurance requirements as listed in Exhibit A – Column 1 of this Order.
12. If requested by Purchaser, Seller shall furnish all necessary lien waivers, affidavits or other documents required to keep the Owner's premises free from liens or claims for liens arising out of the furnishing of the material or equipment herein, as payments are made from time to time under this Order.
13. Both parties to the Order have read and understand the same, and all previous orders, proposals, letters, oral or written promises and understandings, if any, relating to the subject matter of this Order, are either merged herein or, if inconsistent herewith, voided hereby.
14. In the event of Seller's default of any of the terms or conditions set forth herein, the Seller agrees to pay all costs resulting therefrom, including but not limited to, reasonable attorneys' fees and costs.
15. In addition to any right of setoff provided by law, all amounts due Seller or its affiliates under this or any other purchase order or contract shall be considered net of Seller's indebtedness or obligation to Purchaser and its affiliates; and Purchaser may deduct any amount due or to become due from Seller and its affiliates from any sums due or to become due from Purchaser or its affiliates.
16. Purchaser retains the right at any reasonable time to send its authorized representatives to examine all pertinent documents and materials in the possession or under the control of Seller relating to any of Seller's obligations under this Order or any payments requested by Seller pursuant to this Order. Seller shall maintain all pertinent books and records relating to this Order for a period of five (5) years after completion of services or delivery of products pursuant to this Order.
17. If any provision of this Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining conditions of this Order shall remain in full force and effect. This Order's headings will not be used to interpret this Order. This Order was negotiated by Seller and Purchaser who had an opportunity to consult with legal counsel. This Order may only be waived, modified or supplemented by a written document signed by Seller and Purchaser's authorized representatives. No failure(s) or delay(s) in exercising any right or remedy will waive that party's right to later require strict performance. All this Order's provisions including, without limitation, those relating to safety, regulatory compliance, warranty, insurance and indemnification will survive termination of this Order and full enforceable to the full extent necessary to protect Purchaser.
18. This Order shall be interpreted pursuant to the laws of the State of Wisconsin. Notwithstanding any other provision in this Order, the parties agree that all disputes arising out of or related to this Order shall be resolved through litigation. The parties further agree that the sole and exclusive forum for such litigation shall be the Fond du Lac County, Wisconsin Circuit Court. If this venue is deemed unenforceable by a court of competent jurisdiction, the parties agree that the alternative venue shall be the Federal District Court for the Eastern District of Wisconsin, Green Bay Division. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS ORDER OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY (A) AGREES THAT, IN THE EVENT OF LITIGATION, IT SHALL SEEK TO ENFORCE, AND SHALL ABIDE BY, THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS ORDER BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND AGREEMENTS IN THIS SECTION.
19. Seller shall notify Purchaser, in writing, of any conflict in this Order for resolution by Purchaser. Purchaser shall resolve any conflict within this Order, in writing, in accordance with the following order of contract precedence: (a) drawings and technical documents; (b) the Order pages preceding these Terms and Conditions; and (c) these Terms and Conditions. If there is an irreconcilable conflict among the

requirements of the items referenced in (a) through (c), above, the provision imposing the greater duty or obligation on the Seller shall govern.

20. The Seller agrees to comply with all federal, state and local regulations, laws, ordinances and enactments of whatever kind, applicable at the time of sale or which may become effective during the period of the performance of the Work under this Order.
21. Seller will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the Seller's legal duty to furnish information.
22. Seller agrees: (a) to comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor, including but not limited to (i) not discriminating against any employee or applicant for employment because of race, color, religion, national origin, or sex, AND (ii) taking affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex, AND (iii) in all solicitations or advertisements for employees placed by or on behalf of Seller, stating that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, or sex, AND (iv) sending to each labor union or representative of workers with which Seller has a collective bargaining agreement or other contract or understanding, a notice to be provided by Purchaser advising the labor union or worker's representative of Seller's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and posting copies of the notice in conspicuous places available to employees and applicants for employment; and (b) to furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and to permit access to his books, records, and accounts by Purchaser and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
23. Seller warrants that: (a) neither Seller nor any of its officers, directors, employees, agents, or representatives offered or provided, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything else of monetary value to any employee of Purchaser or Purchaser's Agent as an inducement to do business with Seller; (b) Seller is in compliance with federal Anti-Kickback Acts and similar laws; and (c) while this Order is in effect, Seller shall comply with all provisions of (i) 29 CFR part 470, Obligations of Federal Contractors and Subcontractors; (ii) the Equal Opportunity/Affirmative Action clauses of Executive Order 11246 41 CFR 60 1.4; (iii) Section 503 of the Rehabilitation Act of 1973; (iv) 38 USC 2012 of the Vietnam Era Veterans Readjustment Assistance Act of 1974; (v) Affirmative Action Regulations for Veterans 41 CFR 60 250; and (vi) Affirmative Action and Nondiscrimination obligations of contractors and subcontractors regarding individuals with disabilities 41 CFR 60 741, which provisions are incorporated by reference herein.

#### SUPPLEMENTAL TERMS AND CONDITIONS OF PURCHASE FOR ON-SITE SERVICES

24. These Supplemental Terms and Conditions of Purchase for On-Site Services (the Supplemental Terms) supplement the Standard Terms and Conditions that apply to the Order for the portion of the Work that includes installation, start-up, commissioning, decommissioning or other work which requires Seller to be on Purchaser's, Purchaser's Customer's or Owner's property (collectively, the "Services") as described in the Order and accompanying documents. In the event of any conflict, these Supplemental Terms and Conditions take precedence over the Terms and Conditions.

#### 24.0 SUPERVISION AND PROCEDURES

- 24.1 Seller shall supervise and direct the Services using Seller's best skill and attention. Seller shall be solely responsible for and have control over means, methods, techniques, sequences, and procedures and for coordinating all portions of the Services pursuant to the Order.
- 24.2 Seller shall be responsible to Purchaser for acts and omissions of (a) Seller's employees and agents; (b) Seller's subcontractors and vendors; and (c) anyone directly or indirectly employed or engaged by any of the foregoing; and (d) anyone for whose acts any of the foregoing may be liable. All such parties referenced in this Section may individually and collectively be referred to herein as "Seller's Employees" when further specificity is not required.

#### 25.0 PROTECTION OF PERSONS AND PROPERTY/SAFETY PRECAUTIONS AND PROGRAMS

- 25.1 Seller shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Seller shall attend the jobsite safety orientation and shall conduct its operations so as to provide maximum safety while on the jobsite. Supplier shall, at its expense, comply with and cooperate in enforcing Purchaser's, Purchaser's Customer's and Owner's jobsite procedures, regulations and safety programs. Seller shall be responsible for any damage to the site or property of others caused by Seller.
- 25.2 Seller shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:
  - .1 Seller's Employees, the Services, Work and other persons who may be affected thereby;
  - .2 Materials and equipment to be used in performance of the Services, whether in storage on or off the site, under the care, custody, or control of Seller or Seller's subcontractors; and
  - .3 Other property at the project or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

- 25.3 Seller shall give notices required by and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.
- 25.4 Seller shall erect and maintain, as required by existing conditions and performance of the Order, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.
- 25.5 When use or storage of explosives or other hazardous or unusual materials, equipment, or methods (collectively “Hazardous Methods”) is necessary for execution of the Services, Seller shall notify Purchaser in writing in advance and prepare a specific plan for the safe execution of such Hazardous Methods and shall exercise utmost care and carry on such Hazardous Methods under supervision of properly qualified personnel.
- 25.6 Seller shall promptly remedy damage and loss caused in whole or in part by Seller and/or any Seller’s Employee, except damage or loss (a) directly attributable to acts or omissions of Purchaser or anyone (other than Seller and Seller’s Employees) that is directly or indirectly employed or engaged by Purchaser or for whose acts Purchaser may be liable and (b) not attributable to the fault or negligence of Seller and/or Seller’s Employees. The foregoing obligations of Seller are in addition to Seller’s other obligations.
- 25.7 Seller shall not load or permit any part of the construction or project site to be loaded as to endanger its safety.
- 25.8 Each Seller employee or representative must:
- .1 Be skilled, competent, and experienced and have an expert understanding of the design, engineering, manufacturing, installation, operation, and maintenance of the Work as appropriate to perform the Services;
  - .2 Render the Services in a competent and diligent manner, consistent with the Order requirements, accepted industry practice, and any applicable professional codes or standards;
  - .3 Have sufficient authority to work with Purchaser, Purchaser’s Customers and Owner to resolve problems with the Work so that decisions may be made to resolve these issues without delay; and
  - .4 Be authorized to direct correction of manufacturing and design errors in the Work. Seller is responsible for furnishing special tools required by Seller’s employee or representatives.
- 25.9 Supplier agrees to defend, indemnify, and hold harmless Indemnified Parties against any claim arising out of Supplier’s or any Sub-supplier’s use of any tools, equipment, facilities, machinery, hoists, lifts, scaffolding, or similar items; provided, however, Supplier’s indemnification obligation does not extend to the sole negligence or willful misconduct of Indemnified Parties or others.

## 26.0 INSURANCE REQUIREMENTS

- 26.1 Seller shall maintain the insurance requirements as listed in Exhibit A – Column 2 of this Order which shall include the following:
- .1 The required insurance must be written for not less than the limits of liability specified below or required by law, whichever coverage is greater. Seller shall provide and maintain in full force and effect during the performance of the Work the following insurance coverages written by a carrier or carriers with an A.M. Best rating of A- or better and a financial size classification of VII or higher:
  - .2 Commercial General Liability – including, without limitation, Premises and Operations Liability; Contractual Liability; Products Liability and Completed Operations Liability for a minimum of three (3) years after completion of the Work; and Personal and Advertising Liability, written on an “occurrence” form with minimum limits of \$1,000,000 per occurrence, and \$2,000,000 General Aggregate. Any insurance policy exclusions relating to underground work, demolition, blasting, excavation, or rigging must be deleted if these operations are required within the Work to be performed unless a separate policy is in place for these risks.
  - .3 Automobile Liability – covering all owned, non-owned, and hired automobiles with minimum limits of \$1,000,000 combined single limit or \$1,000,000 bodily injury per person/\$1,000,000 bodily injury per accident/\$1,000,000 property damage.
  - .4 Workers Compensation and Employers’ Liability – Workers Compensation insurance providing statutory coverage under the Workers Compensation laws of the state(s) where the Work is performed and Employers’ Liability insurance with minimum limits of \$500,000 each accident/\$500,000 disease each employee/ \$500,000 disease policy limits.
  - .5 Umbrella Liability – the required Commercial General Liability, Automobile Liability, and Employers’ Liability coverages may be provided by any combination of primary and Umbrella Liability coverage.
  - .6 Professional or Errors and Omissions Liability if Seller is providing Professional Services (as defined below) under the Contract – covering Seller’s errors, omissions, or other acts committed or omitted that cause liability in the performance or nonperformance of Seller’s Professional Services, in the amount of not less than \$3,000,000 each wrongful act or omission and in the annual aggregate, to be kept in effect for three (3) years after completion of the Work or termination of the Contract, whichever is later. Professional Services means those services Seller is legally qualified to perform in the capacity as an architect, engineer, land surveyor, landscape architect, construction manager, or as otherwise provided herein.
  - .7 All of the above policies except Professional or Errors and Omissions Liability coverage must be written or endorsed to provide a waiver of subrogation in favor of Purchaser.
  - .8 The following policies must include J. F. Ahern Co., its divisions, subsidiaries, and affiliates, and the directors, employees, and agents of all of the preceding as additional insureds: (a) Commercial General Liability and Automobile Liability; (b) any Umbrella Liability; and (c) any Rigger’s Liability if placed on a liability policy.
  - .9 The Commercial General Liability, Automobile Liability, and any Umbrella Liability must be written or endorsed (a) to be primary over any insurance carried by or on behalf of Purchaser (which other insurance, if any, will be excess, secondary, and noncontributory to that provided by Seller hereunder); and (b) to contain a separation of insureds clause.

**EXHIBIT A**

INSURANCE TYPE	Required Limits	
	Equipment Only/Commodity Purchases	Equipment and On-Site Service Providers
	Column 1	Column 2
<b>Worker's Compensation</b> <ul style="list-style-type: none"> <li>• Worker's Compensation must indicate if proprietor/partners/executive officers are included or excluded.</li> <li>• Worker's Compensation Statutory Limits box must be checked.</li> <li>• Waiver of Subrogation in favor of additional insureds is required and must be stated on certificate.</li> </ul>	N/A	Statutory
<b>Employer's Liability (Coverage B)</b>	N/A	\$500,000 – Each Accident
	N/A	\$500,000 – disease policy limit
	N/A	\$500,000 – disease each employee
<b>Commercial General Liability</b> (Including Contractual Liability, Bodily Injury and Property Damage Combined, and Personal Injury) <ul style="list-style-type: none"> <li>• Policy must be issued on an Occurrence basis</li> </ul>	\$1,000,000 Each Occurrence or limits sufficient to be scheduled under the umbrella policy	\$1,000,000 Each Occurrence or limits sufficient to be scheduled under the umbrella policy
	\$2,000,000 Annual Aggregate	\$2,000,000 Annual Aggregate
<b>Business Automobile Liability</b> <ul style="list-style-type: none"> <li>• Must be written on an "Any Auto" Symbol 1 basis. If you do not have any vehicles, check "Hired Autos" and "Non-Owned Autos" boxes.</li> </ul>	N/A	\$1,000,000 Combined Single Limit
<b>Excess Liability Coverage (Umbrella)</b> <ul style="list-style-type: none"> <li>• Indicate whether coverage is Umbrella or Excess, and show retention/deductible amount or enter N/A, as applicable.</li> <li>• Per Project Aggregate (Please add to your form.)</li> <li>• Policy must be issued on an Occurrence basis and indicated on certificate.</li> </ul>	\$5,000,000 Each Occurrence	\$5,000,000 Each Occurrence
	\$5,000,000 Annual Aggregate	\$5,000,000 Annual Aggregate
<b>Professional Liability (if applicable)</b>	N/A	\$5,000,000 Each Claim
	N/A	\$5,000,000 Annual Aggregate
<b>Contractors Pollution Legal Liability (if applicable)</b>	N/A	\$1,000,000 Each Accident
	N/A	\$1,000,000 Annual Aggregate
<b>Special Conditions</b>		GL policy must be on a per project basis
		Additional Insureds (Primary and Non-Contributory) utilizing CG 2010 and 2037 (07/04) edition or their equivalent
		Waiver of Subrogation in favor of additional insureds is required on all lines of coverage and must be stated on certificate.
		J. F. Ahern Co., Owner, Contractor, and Architect or Engineer is an additional insured for general liability automobile and umbrella on a Primary and Non-Contributory basis and must be stated on certificate.

All Certificates of Insurance must be prepared on a standard "Acord" Form 25 and include the following:

1. Certificate Holder: **J. F. Ahern Co., P.O. Box 1316, Fond du Lac, WI 54936-1316**
2. Description of coverage, including policy numbers, limits, expiration dates, insurers and required policy extensions.
3. Name, location of project, and Ahern project number if applicable. One certificate is needed for each project or one certificate with an addendum attached listing all projects.
4. 30 Days Notice of Cancellation for all lines of coverage and must be stated on certificate.
5. Authorized signature and date.

NOTE: Employers' Liability, Auto and General Liability limits can be shown as above or satisfied through a combination of primary and umbrella policies.

**FAILURE TO TIMELY SUBMIT A PROPER INSURANCE CERTIFICATE WHICH INCLUDES NAME, LOCATION OF PROJECT AND AHERN PROJECT NUMBER WILL RESULT IN DELAY OF PAYMENT. A VALID CERTIFICATE IS REQUIRED BEFORE PAYMENT WILL BE MADE.**