

**PURCHASE ORDER TERMS AND CONDITIONS IMPORTANT - READ CAREFULLY**

**1. General.** All purchases by the **Board of Commissioners of Lowndes County, GA** ("Lowndes County" or "Buyer"), and all sales by you ("Supplier") to Lowndes County, pursuant to this Purchase Order shall be governed *only* by these Purchase Order Terms and Conditions *together with* (i) such terms set forth in the Purchase Order Form ("Form"), (ii) such plans, specifications or other documents as are incorporated by reference, (iii) the Lowndes County Purchasing Policy (a copy of which is available from the County's Purchasing Department) which Policy is incorporated herein by this reference, and (iv) such amendments as authorized in writing by Buyer; and which shall collectively constitute the entire contract (the "Purchase Order") between Buyer and Supplier. County may waive application of any or all of its Purchasing Policy's provisions to this Purchase Order for any or no reason. If bid documents, performance specifications, technical product descriptions, or other similar descriptive materials submitted by Supplier in connection with the Purchase Order or Supplier's proposal have been incorporated by reference, these shall not be deemed to supersede any contrary requirements of Buyer, but to the extent that such materials are not inconsistent with Buyer's requirements, they shall constitute a part of this Purchase Order. If this Purchase Order is construed as an offer, this offer expressly limits acceptance to the terms of this offer and Buyer hereby rejects any different or additional terms of Supplier in any response to this offer. If this Purchase Order is construed as an acceptance of an offer, this acceptance is expressly conditioned upon the offeror's assent to any different or additional terms contained or referenced in this Purchase Order. If this Purchase Order is construed as a confirmation of an existing contract, the parties agree that this confirmation states the exclusive terms of any contract between the parties for the transaction(s) contemplated hereby. This Purchase Order shall be deemed to have been accepted by Supplier upon receipt by Buyer of any writing, including a writing transmitted by fax or other means of electronic transmission, indicating acceptance, or by any of the following: (i) shipment of the goods hereunder or any portion thereof, (ii) commencement of any work hereunder on site, or (iii) performance of any services hereunder.

**2. Price; Payment.** If this Purchase Order is not priced, then it shall not be billed at prices higher than those last quoted and charged Lowndes County or, if none, at prices higher than last charged by Supplier for similar product(s) and quantity in the Lowndes County, GA area. Payment and discount terms are as set forth in the Form. If no terms are specified, the net amount shall be payable within 30 days after the later of (i) delivery and acceptance of goods or other performance conforming with the terms of this Purchase Order, or (ii) receipt by the Lowndes County Finance Department of a complete and accurate invoice. Except as otherwise provided in the Form, the price includes all applicable Federal, State and local taxes and duties. Supplier assigns to Buyer all rights to refunds of sales and use taxes paid in connection with this Purchase Order and agrees to co-operate with Buyer in the processing of any refund claims. Unless expressly otherwise provided in the Form, Buyer shall not be liable for any shipping, handling, packaging, fuel surcharges or similar fees.

**3. Time.** If delivery or completion dates cannot be met, Supplier shall inform Buyer immediately. Such notice shall not, however, constitute a change to the delivery or completion terms of this Purchase Order unless Buyer so modifies this Purchase Order in writing. If any item is not received or if any element of the work is not completed by the date specified, Buyer, at its option and without prior notice to Supplier, may either approve a revised date or may cancel this Purchase Order and obtain such goods or work elsewhere. In either event, Supplier shall be liable to Buyer for any resulting loss incurred by Buyer. Supplier's sole remedy for a delay caused by Buyer shall be an extension in the time for Supplier's performance equal to the duration of Buyer's delay. Supplier shall not be liable for damages resulting from Supplier's failure to deliver or complete, or for delays in delivery or completion, caused solely by strikes or lock-outs, fires, war, or acts of God, in each case not caused by or within the control of Supplier. **TIMING OF DELIVERY AND/OR OF PERFORMANCE OF THE WORK IS OF THE ESSENCE OF THIS PURCHASE ORDER.**

**4. Improper Performance.** If Supplier fails to deliver all or any part of the goods or perform any of the work in accordance with the terms and conditions of this Purchase Order, in addition to other remedies provided by law, Buyer reserves the right to reject any goods, revoke any previous acceptance, or cancel all or any part of the Purchase Order. Acceptance of any part of the Purchase Order shall not bind Buyer to accept any future shipments or work, nor deprive it of the right to return goods already accepted.

**5. Governing Law.** This Purchase Order, and the rights and obligations of the parties thereto, shall be governed and interpreted in accordance with the laws of the State Georgia. The parties acknowledge and agree that the contract hereunder for the purchase and sale of goods and/or services is made and is being performed in Georgia. Disputes arising in connection with this Purchase Order shall be resolved in and only in the courts sitting in Lowndes County, GA as the sole and exclusive judicial forum, and Supplier and Buyer each hereby waive any objection to venue therein. **BUYER AND SUPPLIER WAIVE THEIR RIGHT TO A JURY TRIAL WITH REGARD TO ANY DISPUTE ARISING IN CONNECTION WITH THIS PURCHASE ORDER.**

**6. Warranty.** Supplier expressly warrants for one (1) year all (i) goods delivered under this Purchase Order to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered, and (ii) work performed under this

Purchase Order to be done in a workmanlike manner and in conformity with all plans, specifications and other data incorporated as part of this Purchase Order. These express warranties shall not be waived by reason of acceptance or payment by Buyer. This Purchase Order incorporates by reference all terms of the Uniform Commercial Code as adopted in the State of Georgia (the "UCC") providing any protection to Buyer for goods, including but not limited to all warranty protection (express or implied) and all of Buyer's remedies under the UCC. All goods and work shall also be subject to any stricter warranties specified in the Purchase Order or in other materials incorporated by reference.

**7. Risk of Loss.** Unless the Purchase Order expressly states otherwise, all goods shall be shipped FOB: the "Ship to" location designated in the Form (or if none indicated, FOB to such location in Lowndes County, GA as Buyer may instruct). Risk of loss shall not pass to Buyer until goods called for in this Purchase Order actually have been received and accepted by Buyer at the destination specified herein. Supplier assumes full responsibility for packing, crating, marking, transportation, and liability for loss and/or damage even if Buyer has agreed to pay freight, express or other transportation charges.

**8. Indemnity.** Supplier hereby agrees to, at its expense, indemnify, defend, protect, and hold Buyer harmless from and against any and all claims, demands, liability, loss, costs, damages or expenses (including attorney fees and costs of settlement) related to or arising from, and to the extent of, any (i) breach by Supplier of any term of this Purchase Order including, but not limited to, these Terms and Conditions or any provision thereof, (ii) violation of any Federal, State or local law, rule, regulation or ordinance in connection with Supplier's providing the materials, goods, equipment, services, or other items supplied hereunder, or the packaging or transportation of same, or (iii) personal injury, including death at any time arising therefrom, or property damage to any person, directly or indirectly resulting from or in any manner connected with the materials, goods, equipment, services, or other items supplied hereunder, or with the performance of this Purchase Order by Supplier and/or its employees or agents or employees or agents of any of Supplier's subcontractors.

**9. Patent Indemnity.** Supplier agrees to indemnify, save harmless and defend Buyer from and against any and all suits, claims, damages, costs, and attorney's fees arising out of or in connection with any infringement or claimed infringement of any United States or foreign patent, trademark or copyright in the manufacture, use or sale of the materials, goods, equipment, or other items furnished under this Purchase Order. In case said item(s) are found to infringe, and the use thereof is enjoined, Supplier shall, at its own expense, either (i) procure for Buyer the right to continue using said item(s), or (ii) at the option of Buyer, either replace the same with equally efficient non-infringing materials, goods, equipment or other item(s), or modify the infringing item(s) without impairing its efficiency so it becomes non-infringing, or remove said infringing item(s) and refund to Buyer the purchase price and the transportation and installation costs thereof.

**10. Assignment; Subcontracting.** Neither party may assign this Purchase Order or any benefits arising from this Purchase Order without prior written consent of the other and, unless otherwise agreed upon in writing by the parties, the rights of any assignee shall be subject to all set-offs, counterclaims, and other comparable rights arising hereunder. Except in the case of raw materials, castings, forgings or rough welded structures, or standard commercial goods, or except as otherwise agreed in writing by Buyer, Supplier shall not delegate or subcontract the work on any item of material or service to be delivered or performed under this Purchase Order.

**11. Compliance with Laws and Regulations.** In the performance of work under this Purchase Order, Supplier, at its expense, shall comply and assure that any materials, goods, equipment, services or other items purchased hereunder, as well as the packaging and transportation of same, comply with all applicable Federal, State or local laws, rules, regulations or ordinances.

**12. Chemical Substance Identification.** By acceptance of this Purchase Order, Supplier certifies that any chemical substance(s) furnished pursuant to this Purchase Order has been properly labeled, and that proper information on the substance(s), e.g., Material Safety Data Sheets, has been provided to Buyer, pursuant to all Federal, State or local laws and regulations.

**13. Changes; Termination.** Buyer, by written notice, may modify or terminate this Purchase Order, in whole or in part. In the event this Order is so modified or terminated as a result of Supplier's default or breach, the Supplier shall be liable for all damages allowed in law or equity, including any loss of Buyer or excess cost of reprocurring similar items. If this Purchase Order is modified or terminated for the convenience of Buyer, Supplier will be compensated to the extent that items have been accepted by Buyer prior to the effective date of such modification or termination. Other than to this extent, Buyer shall not be liable to Supplier for any damages on account of its failure to accept any or all of the items ordered. Buyer may immediately cancel this Purchase Order in the event of insolvency of Supplier, an assignment by Supplier for the benefit of its creditors, or the filing by or against Supplier of a voluntary or involuntary petition in bankruptcy. Except as set forth in this Section 13, this Purchase Order shall only be modified in writing executed on behalf of Buyer by its Finance Director or County Manager, and no waiver or modification shall be by any oral agreement or inferred from any course of conduct or dealings. Supplier's warranties, and its liability for defective or non-conforming work or goods, as well as Sections 5, 6, 8, 9, 10, 11, 12, and 13 of these Terms and Conditions, shall survive termination and remain in full force and effect. \*\*\*\*