

## TERMS AND CONDITIONS

1. **PARTIES; ITEMS.** Danis Building Construction Company will be referred to as “Purchaser” and the person or company indicated on the front hereof with whom the order is placed will be referred to as “Seller”. This order may be used to purchase services, supplies, machinery, equipment, and other goods. All goods and services covered by this order regardless of type will be referred to as “items”. If the job site indicated on the front hereof is not owned by Purchaser, the person or company owning the same or with whom Purchaser has contracted, will be referred to as “Owner”. Purchaser is making this order either as an independent contractor or as the agent of Owner.

2. **PRICE; TAXES.** If a price is stated on the front hereof, the price for the items shall be the lower of (A) the price Purchaser has set forth, or (B) Seller’s prevailing market price for such items. If no price is stated on the front hereof, the price for the items shall be the lower of (A) the price (if any) Seller last charged or quoted to Purchaser for such items, or (B) Seller’s prevailing market price for such items. As used in this section, prevailing market price shall mean the lowest price at which goods or services the same as or substantially similar to the items are offered or sold by Seller to any similar customer, under similar circumstances, in quantities similar to those being purchased hereunder, within the period beginning five days before the date of this order and ending five days after delivery of the items to Purchaser. Unless otherwise provided in this order, the price includes all applicable federal, state, and local taxes and all charges for freight and insurance to deliver the items to the destination specified by the Purchaser.

3. **SHOP DRAWINGS; SUBMITTALS.** Seller shall, at its own expense, prepare and submit to Purchaser such shop drawings, samples, models and other submittals for the items as may be requested by Purchaser and within 30 days after the date of this order or such other time which may be requested by Purchaser in writing. Such shop drawings, samples, models and other submittals shall be approved in writing by such persons as Purchaser may designate before Seller proceeds under this order. No approval of any submittals nor the making of any payment to Seller shall constitute an acceptance of any items or impair Purchaser’s right of inspection or rejection or any other rights or remedies to which Purchaser may be entitled, or relieve Seller from any of its obligations or warranties hereunder. It shall be the obligation and responsibility of Seller to take such measurements as will ensure the proper matching and fitting.

4. **PAYMENT.** Purchaser may require, as a condition precedent to any payment, that Seller furnish such details of cost, waivers and releases of lien, waivers of rights to claim against payment bonds (if any), sworn statements, affidavits and other documentation (in form and substance) as Purchaser may request from time to time. All payments to Seller are subject to the condition precedent that Buyer be in receipt of payment from Owner. If Purchaser does not receive payment from Owner for any reason whatsoever, Seller agrees that Purchaser shall not be liable for the payment, nor be indebted to Seller. Unless otherwise provided in this order, Purchaser shall have the right to withhold 10% retainage from any payments due to Seller. Subject to other provisions of this Section 4 and order, Purchaser shall pay the retainage to the Seller within 30 days after the final delivery, completion and performance of the items and all other obligations under this order.

5. **DELIVERY OR COMPLETION DATE(S).** If Purchaser has indicated on the front of this order any completion date(s) or date(s) upon which the items are to be delivered to Purchaser, Purchaser reserves the right to cancel this order if any such date is not met or if prior to any such date, Purchaser has demanded adequate assurance of due performance and Seller fails to provide such assurance within 10 days after the date of Purchaser's demand. If a delivery or completion date is not specified on the front of this order, a reasonable time will be allowed. **TIME IS OF THE ESSENCE OF THIS ORDER.**

6. **TITLE AND RISK; SHIPMENT.** Regardless of the F.O.B. point indicated, title and risk of loss with respect to the items shall remain in Seller until the items have been delivered to and accepted by Purchaser, or an agent or consignee duly designated by Purchaser, at the location specified on the front hereof. A packing slip must accompany each shipment. If a shipment is to a consignee or agent of Purchaser, a copy of the packing slip shall be forwarded concurrently to Purchaser. If no packing slip is sent, the count or weight reported by Purchaser or its agent or consignee shall be final and binding upon Seller with respect to such shipment. At or prior to the time of delivery of the items, Seller shall furnish to Purchaser all manuals, specifications, and other data necessary for the installation, maintenance, and operation of the items.

7. **COMPLIANCE WITH LAWS.** Seller warrants that the items and their production or completion will not violate or cause Purchaser or Owner to be in violation of any applicable federal, state or local laws, regulations, or orders. Notwithstanding the foregoing, with respect to the Occupational Safety and Health Act of 1970 (OSHA) and the standards promulgated thereunder, Seller warrants that (A) the items will conform to all requirements of OSHA and the standards promulgated thereunder which are generally applicable to the items regardless of how the items are used; and (B) if Purchaser has specifically identified to Seller any other requirements of OSHA or of the standard promulgated thereunder which are or may be applicable to the items because of the use to which Purchaser or Owner will put the items, the items will conform to the same.

Without limiting the generality of the preceding paragraph, Seller certifies that the items will be produced in compliance with Sections 6, 7 and 11 hereof and all applicable requirements of the Fair Labor Standards Act, as amended, and the regulations and orders promulgated thereunder. Additionally, if the items are to be used by Purchaser in whole or in part for the performance of a federal government contract, Seller shall comply with all applicable provisions of such contract and of the Federal Acquisition Regulations, 48 C.F.R., Chapter 1, Parts 1-99, or if such federal government contract relates to the Department of Defense, the Federal Acquisition Regulation Supplement, 48 C.F.R., Chapter 2, Parts 201-299, as amended, all of which are incorporated herein by reference.

8. **CHANGES.** Purchaser shall have the right to make changes (including additions and omissions) from time to time in the items, their specifications, drawings, design, quantity, packing instructions, destination or delivery schedule. If any such change affects the price of the items or the time required for Seller's performance under this order, an equitable adjustment in the price or delivery schedule or both shall be made by agreement of Seller and Purchaser, provided that all claims for adjustments under this section shall be made by Seller to Purchaser in writing within 5 days after Purchaser makes the change to which the adjustment relates. Seller’s failure to assert a claim in the manner and within the time provided in the preceding sentence shall result in a complete and final waiver of such claim. No adjustment in the terms of this order shall be binding upon Purchaser unless Purchaser has agreed to the same by written change order.

9. **INSPECTION.** Purchaser may inspect and test the items during their manufacture, construction or preparation at reasonable times and shall have the right to inspect such items at the time of their delivery and/or completion. Notwithstanding previous inspection by Purchaser, if defects or nonconformities for which Seller is responsible under the terms of this order are revealed by subsequent inspection, analysis, manufacturing operations, use, or otherwise, Purchaser may reject or revoke its acceptance of any affected items within a reasonable time after such defects or nonconformities are discovered or pursue its rights or remedies under Section 17 hereof or otherwise.

10. **DEDUCTIONS AND SET-OFF.** Any sums payable to Seller shall be subject to all claims and defenses of Purchaser or any of its affiliated companies, whether arising from this or any other transaction or occurrence, and Purchaser may set-off and deduct against any such sums all present and future indebtedness of Seller or any of its affiliated companies to Purchaser or any of its affiliated companies.

11. **WARRANTY BY SELLER.** Seller warrants all items delivered hereunder to be new unless otherwise specified, to be free from defects in design, material and workmanship, to be of good and merchantable quality, to conform strictly to any specifications, drawings, or samples which may have been provided to or furnished by Purchaser, and to be fit for the particular purposes for which the items are intended. Seller hereby further makes all such representations and warranties as Purchaser made under any contract between Purchaser and Owner and to which the items relate, and agrees to be bound to Purchaser by all of the terms and provisions of such contract relating to the items. Seller further agrees to assume toward Purchaser all of the duties, obligations and responsibilities that Purchaser by such contract assumes toward Owner relating to the items. Seller further warrants that it will have good title to the items free and clear of all liens and encumbrances and shall transfer such title to Purchaser. All warranties of Seller which are set forth in this section or in any other part of this order or which are implied by law shall survive any inspection, delivery, acceptance, or payment by Purchaser, shall be freely transferable to and by the Purchaser and Owner, and shall be deemed to be made for the benefit of both Purchaser and Owner.

12. **INDEMNIFICATION.** To the fullest extent permitted by law, Seller shall indemnify and hold harmless and, upon request, defend Purchaser and Owner, their agents, employees and persons claiming through Purchaser or Owner, from and against all claims, losses, damages, expenses, demands, litigation, or proceedings of whatever kind, whether based upon negligence, breach of express or implied warranty, strict liability, contract or any other theory, and from and against all direct, indirect, special, incidental, or consequential damages of every kind whatsoever, arising out of, by reason of, or in any way connected with, or in any way due or resulting from, or alleged to be due or resulting from, in whole or in part, the items, the design, manner of preparation, manufacture, construction, completion, operation, delivery, or non-delivery of the items by Seller or any subcontractor or supplier of Seller, the breach by Seller of any representations, warranties or other obligations under this order, or the failure of Seller or any subcontractor or supplier of Seller to give adequate warnings in connection with the items. Seller shall, upon request, pay or reimburse Purchaser or any other party entitled to indemnification hereunder for all costs and expenses, including attorneys’ fees, incurred by Purchaser or such other party in connection with any such claim, demand, litigation, or proceeding.

13. **INSURANCE.** Seller shall maintain products liability and completed operations insurance which provides, under the terms of the primary policy or by contractual liability endorsement if necessary, coverage for claims involving bodily injury or property damage arising out of or in connection with the items. Such insurance shall be written on an occurrence basis with the limits not less than \$1,000,000 per occurrence or such greater minimum amounts, deductibles and other terms as Purchaser shall designate and shall, upon Purchaser’s request, declare Purchaser and/or Owner as an additional insureds. Such policies of insurance shall not be cancelable except upon 30 days’ written notice to Purchaser. Seller shall also maintain workers compensation insurance as required by the State of Ohio and any other state in which Seller employs employees in furtherance of this order. Seller shall furnish proof of all required insurance to Purchaser should Purchaser so request. Seller and Purchaser waive all rights against each other for damages to the extent

covered under any insurance policy obtained pursuant to this Section 13 or other insurance applicable to the items, except such rights as they have to proceeds of such insurance. Seller's purchase or failure to obtain the insurance required hereunder or the failure of Purchaser to request such insurance or proof of insurance shall not limit or in any way diminish Seller's indemnification obligations hereunder.

14. **PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT.** Seller shall indemnify Purchaser and Owner against and hold Purchaser and Owner harmless from any and all costs, expenses, liabilities, and damages, including attorneys' fees, which Purchaser or Owner may incur in connection with any suit or claim of infringement of any patent, copyright, trademark, or trade name by reason of the manufacture, use or sale of the items. If so requested by Purchaser or Owner, Seller shall, at its expense, appear in and assume the defense of any litigation to which Purchaser or Owner has been made a party which relates to any such infringement.

15. **PURCHASER'S SPECIFICATIONS, TECHNICAL DATA, ETC.** Any specifications, drawings, notes, instructions, engineering notices, or technical data furnished by Purchaser to Seller or referred to in this order shall be deemed to be incorporated herein by reference the same as if fully set forth. Seller shall cause the items to be in strict compliance with all such requirements. Disapproval of any items by Owner or Owner's representative shall be cause for cancellation of this order without liability of Purchaser to Seller and shall entitle Purchaser to exercise its remedies under Section 18 or otherwise. Seller shall not, without Purchaser's prior written consent, disclose any such document or any information contained therein to any person or entity other than those employees of Seller who require the same for performance of their duties in connection with this order.

16. **SELLER'S EMPLOYEES.** Seller's employees shall be skilled in their trades. Any employee of Seller may be refused admittance to the job site or may be removed from the job site at any time by Purchaser for any or no reason. Seller shall immediately replace any such employee with an employee satisfactory to Purchaser.

If any of Seller's employees assigned to the job site engage in a strike or other work stoppage or cease work due to picketing or a labor dispute of any kind, Purchaser may, at its option and without prejudice to any other remedy it may have, provide any such labor and deduct the cost thereof from any money then due to thereafter becomes due to Seller.

Seller shall require its employees on the job site to wear and use safety and health equipment, to work in harmony with others on the job site, and to comply with Purchaser's and Owner's regulations. Purchaser shall have the right to furnish any safety or health equipment which Seller fails to provide promptly, and Seller shall on demand pay Purchaser's cost thereof plus 20% for Purchaser's overhead and other related costs.

17. **DEFAULT.** Either party shall be in default of this order upon the occurrence of either of the following events: (A) the other party's insolvency or actions indicating insolvency such as the filing of a petition by or against such party under any chapter of the bankruptcy code, the appointment of a receiver for such party, or such party's attempt to make a general assignment for the benefit of creditors, or (B) that party's failure to comply with any of its obligations under this order if such failure continues for a period of five days after notice thereof is given to such party by the other party.

18. **REMEDIES.** Any default by Seller as set forth in Section 17 may be cause for cancellation of this order by Purchaser. In the event of such cancellation, Purchaser shall have no further obligations hereunder. Without limiting the foregoing, any items which at any time, whether before or after delivery, payment, and/or utilization, fail to conform with any warranties, agreements, quantities, delivery schedules or other requirements of this order, shall be deemed non-conforming items. In the event of any non-conforming items, Purchaser in its sole and absolute discretion, without limiting any other rights or remedies Purchaser may have, may: (A) require Seller to repair or replace, at Purchaser's option, such non-conforming items at Seller's expense; or (B) reject, in whole or in part, the items that are the subject of this order and receive full credit for or refund of the purchase price associated therewith. Non-conforming items may be held (or returned to Seller) at Seller's expense and risk, and shall be replaced by Seller only upon issuance of a new order by Purchaser. Purchaser may charge Seller for all expenses of unpacking, examining, storing, repacking and reshipping any non-conforming items and may also charge Seller for any other incidental, liquidated or consequential damages suffered by Purchaser as a result thereof.

19. **OPTIONAL CANCELLATION OR DELAY.** Purchaser shall have the option at any time (whether or not Seller is in default) upon notice to Seller to cancel this order in whole or in part as to the undelivered portion of any items to be furnished hereunder or to delay the delivery or completion of all or part of the items. Such cancellation or delay shall be without cost to Purchaser to the extent that the items are standard stock goods which can be resold by Seller and/or the items include services which Seller has not then yet performed. In all other cases, Seller shall have the right to compensation (A) in the case of cancellation, for Seller's actual cost incurred by Seller in connection with this order up to the date of such cancellation by Purchaser, provided, however, that in no event shall such amount together with all previous payments made to Seller exceed the total purchase price set forth on the front hereof and provided further that Seller shall deliver to Purchaser any partially or wholly completed items prior to being entitled to payment; or (B) in the case of delay, for reasonable handling and storage charges. All claims for compensation under this section shall be made by Seller to Purchaser in writing within 5 days after Purchaser notifies Seller of the cancellation or delay, as the case may be. Seller's failure to assert a claim in the manner and within the time provided in the preceding sentence shall constitute a complete and final waiver of such claim.

20. **LIMITATION ON ASSIGNMENT.** Seller may not assign this order or any right hereunder without the prior written consent of Purchaser. Purchaser in its sole and absolute discretion may declare any assignment made without the required consent to be void. No consent to or acceptance by Purchaser of any assignment shall relieve Seller of its responsibilities under this order.

21. **LICENSES.** Seller shall timely obtain and pay for any licenses, permits, or inspections by public bodies required in connection with the manufacture, completion, or delivery of any and all items.

22. **PURCHASER'S RIGHTS OR REMEDIES.** Any rights or remedies granted to Purchaser in any part of this order are not exclusive of, but are in addition to, any other rights or remedies granted in any other part of this order and any other rights or remedies that Purchaser may have at law or in equity.

23. **ENTIRE AGREEMENT.** This document, together with any information or documents incorporated herein by reference, contains the entire agreement between Purchaser and Seller and constitutes the complete and exclusive expression of the terms of the agreement, all prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter hereof being merged herein. Purchaser expressly limits any acceptance by Seller to the terms of this order, and any terms which are additional or contrary to any terms set forth herein may only be proposed by Seller in writing apart from Seller's standard quotation, acknowledgment, or other similar form. Purchaser shall not be deemed to assent to any additional or contrary terms proposed by Seller unless Purchaser has expressly agreed to the same by written change order. If Seller has heretofore made Purchaser an offer with respect to the items, this order shall not operate as an acceptance of Seller's offer, but rather shall be deemed to be a counteroffer.

24. **SEVERABILITY.** In the event that any provision hereof is held by a court or arbitrator(s) of competent jurisdiction to be invalid or unenforceable in whole or in part, such provision shall be ineffective only to that extent without invalidating or rendering unenforceable any other provision hereof.

25. **GOVERNING LAW.** This document and the purchase of any items hereunder shall be governed by and construed in accordance with the internal substantive law of the State of Ohio regardless of the laws that might otherwise govern under principles of conflict of laws.

26. **DISPUTE RESOLUTION.** At Purchaser's option and in Purchaser's sole and absolute discretion, all claims controversies or other matters in dispute, except for any that have been waived or otherwise barred by the terms of this order, shall be decided by arbitration in Dayton, Ohio, in accordance with the Construction Industry Rules of the American Arbitration Association then obtaining. All decision(s) of the arbitrator(s) in such proceeding shall be based upon the terms this order, applicable law and judicial precedent as applied to the facts presented by the parties. In the event that Purchaser elects not to submit to arbitration, then such claims, controversies or other matters in dispute shall be brought only in a court of the jurisdiction in which the branch office of the Purchaser which is managing the project for which the items are to be delivered is located or in a court of Montgomery County, Ohio. Purchaser and Seller consent to the exclusive jurisdiction and venue of those courts.

27. **WAIVER OF JURY.** Seller hereby knowingly, voluntarily and intentionally waives (to the extent permitted by applicable law) any right it may have to a trial by jury of any claim, controversies or other matters in dispute.