



Purchase Order Terms & Conditions

1. **Applicability.** These Purchase Order Terms and Conditions (these "**Terms**") are the only terms which govern the purchase of the goods ("**Goods**") and services ("**Services**") by Advanced American Construction, Inc., its parents, affiliates, and subsidiaries ("**Buyer**") from the seller named on the Purchase Order ("**Seller**"). The purchase order issued by Buyer (the "**Purchase Order**") and these Terms (collectively, this "**Agreement**") constitute the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Notwithstanding, if a separate written contract signed by authorized representatives of both parties is in existence and applicable to the sale of the Goods and Services described in a Purchase Order ("**Other Contract**"), the terms and conditions of the Other Contract are deemed incorporated into the Purchase Order and shall prevail to the extent of any conflict with these Terms. These Terms prevail over any of Seller's general terms and conditions regardless of whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller's acceptance to the terms of this Agreement. Fulfillment of or other performance under a Purchase Order constitutes acceptance of these Terms.

2. **Delivery of Goods and Performance of Services.**

(a) Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. Buyer has the right to return any Goods delivered prior to the Delivery Date at Seller's expense and Seller shall redeliver such Goods on the Delivery Date.

(b) Seller shall deliver all Goods to the address specified on the face of the Purchase Order (the "**Delivery Point**") during Buyer's normal business hours or as otherwise instructed by Buyer. If not specified, the Delivery Point shall be Buyer's facility in Portland, OR. Seller shall pack all Goods for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Packing lists must be enclosed in or affixed to each container, box or package shipped pursuant to the Purchase Order, accurately indicating the contents therein. Seller is solely responsible for the proper packaging, stuffing, labeling and placarding of any shipment and for otherwise ensuring that the Goods are prepared for shipment in compliance with all laws, regulations or ordinances in effect or otherwise applicable at or to the locations from, to, and through which the Goods are shipped, together with any rules, terms, published tariffs or other conditions imposed by any carrier. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material and any return of such packaging material shall be made at Seller's risk of loss and expense.

(c) Seller shall provide the Services to Buyer as described and in accordance with the dates or schedule set forth on the purchase order and in accordance with the terms and conditions set forth in these Terms.

(d) Seller acknowledges that time is of the essence with respect to Seller's obligations hereunder and the timely delivery of the Goods and Services, including all performance dates, timetables, project milestones and other requirements in this Agreement.

3. **Quantity.** If Seller delivers more or less than the quantity of Goods ordered, Buyer may reject any partial delivery or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's sole risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

4. **Shipping Terms.** All Goods must be shipped and delivered in accordance with the terms set forth on the face of the Purchase Order in the box labeled "Delivery Terms." If no shipping terms are specified or the Delivery Point is not identified in the Purchase Order, all Goods shall be shipped and delivered F.O.B. and the Delivery Point shall be Buyer's facility in Portland, Oregon.

5. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point.

6. **Quality, Inspection and Rejection of Nonconforming Goods.** All Goods furnished by Seller under the Agreement are subject to inspection and testing by Buyer or/representatives of Buyer's customer, client, and any intended third-

party user or owner of Buyer's products (collectively, "**User Representatives**"). Seller must provide and maintain inspection and quality control systems acceptable to Buyer covering all Goods furnished under this Agreement. On or before the Delivery Date, Seller will provide Buyer material certifications and any additional compliance information or documentation related to the Goods as described on the Order or as may be requested by Buyer or User Representatives (collectively, "**Quality Documentation**") Buyer and User Representatives have the right to inspect the Goods prior to, on, and after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it or any User Representatives determine the Goods are nonconforming or defective or that Seller has not furnished the required Quality Documentation. If inspections or tests are made by Buyer or User Representatives at Seller's or Seller's suppliers or subcontractors' facilities, Seller, without additional charge, will provide reasonable access for Buyer and User Representatives.

7. **Price.** The price of the Goods and Services is the price stated in the Purchase Order (the "**Price**"). If no price is included in the Purchase Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Purchase Order. Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Point, insurance, customs duties, fees, and applicable taxes (including, but not limited to, all sales, use or excise taxes). No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer which Buyer may grant or withhold in Buyer's sole unfettered discretion.

8. **Payment Terms.** With respect to Goods, Seller shall issue an invoice to Buyer on or after the completion of delivery. With respect to Services, Seller shall invoice Buyer in arrears upon completion unless otherwise specified in the Purchase Order. All invoices shall be issued in accordance with these Terms. Buyer will pay all properly invoiced, undisputed amounts due to Seller within thirty (30) days after Buyer's receipt of such invoice. The parties will seek to resolve all such payment disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller. Buyer may also withhold any payment to Seller until receiving affidavits waivers and releases with respect to claims for labor and materials as Buyer may require.

9. **Seller's Obligations Regarding Services.**

(a) Seller shall obtain and maintain all necessary permits and consents and comply with all relevant laws applicable to the provision of the Services or Goods and comply with all rules, regulations and policies of Buyer, including but not limited to general health and safety practices and procedures.

(b) Seller shall ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services, and that all equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Buyer. Seller shall not utilize or access any of Buyer's equipment without the express written permission of Buyer. In the event Seller utilizes or accesses any of Buyer's equipment, including machinery, tools, scaffolding, hoists, lifts, vessels, vehicles, cranes, or other similar items leased or under the control of Buyer, Seller shall indemnify Buyer and the Indemnitees for any loss or damage arising out of such access or use in accordance with Section 13.

(c) Seller must maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Seller in providing the Services in such form as Buyer shall approve.

(d) Seller shall not assign or subcontract any of its rights or obligations without Buyer's consent. Buyer's consent shall not relieve Seller of its obligations under the Agreement, and Seller shall remain fully responsible for the performance of any subcontractor(s) and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Seller's own employees. Nothing contained in this Agreement shall create any contractual relationship between Buyer and any Seller subcontractor or supplier. Seller shall timely pay for all labor and material.

10. Intellectual Property.

(a) Services. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product and other materials that are delivered to Buyer under this Agreement or prepared by or on behalf of Seller in the course of performing the Services and necessary (collectively, the "**Deliverables**") shall be owned exclusively by Buyer, except to the extent such Intellectual Property Rights were independently developed or owned by Seller prior to performance of the Services and were developed without reliance on any Buyer furnished data or information ("**Seller IP**"). Seller shall be deemed to have granted to Buyer an irrevocable non-exclusive, fully paid up, royalty free, assignable, sublicensable, and worldwide license to use and exploit all Seller IP incorporated into any Deliverables provided to Buyer in connection with the Services.

(b) Buyer Materials. As between Buyer and Seller, Buyer is and shall remain the sole owner of all Intellectual Property Rights in and to any data, designs, know-how, trade secrets, documentation, processes, specifications, and confidential information furnished or otherwise made available or accessible to Seller by Buyer in connection with, arising out of or related to this Agreement ("**Buyer Materials**"), together with any and all Intellectual Property Rights derived from or incorporating, in whole or in part, any Buyer Materials ("**Derivatives**"). Nothing in this Agreement shall be deemed to have transferred any right, title, or interest in any Buyer Materials or Derivatives to Seller except for a limited non-assignable and non-transferable license to the extent required for Seller to furnish the applicable Goods or Services in accordance with this Agreement. All other rights in and to Buyer Materials and Derivatives are expressly reserved by Buyer.

11. Change Orders. Buyer may at any time, by written instructions issued to Seller (each a "**Change Order**"), order changes to the Goods or Services, including changes to (a) the specifications, drawings, and data for Goods or Services; (b) quantity; (c) methods of shipment or packaging; (d) Delivery Date; (e) Delivery Point; and (f) any other matters affecting this Order. Unless Seller notifies Buyer that a change set forth in a Change Order will result in an increase in cost by submitting a written cost proposal or written notice to Buyer that the change is otherwise impractical to deliver by the Delivery Date within two (2) business days following receipt of the Change Order, Seller will be deemed to have waived any right to an adjustment in price or Delivery Date. If Buyer accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Agreement. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in the Seller's compensation or the performance deadlines under this Agreement.

12. Warranties.

(a) Seller warrants to Buyer that all Goods sold and Services delivered to Buyer under this Agreement will be transferred with good and merchantable title, free and clear of all liens, security interests or other encumbrances;

(b) Seller warrants to Buyer that for the longer of: (A) a period of 12 months from Buyer's acceptance; (B) where Buyer incorporates the Goods into a project or installs on a customer project, 12 months from Buyer's substantial completion; (C) any manufacturer warranty generally offered by Seller to purchasers of the Goods; all Goods will: (i) be free from any defects in workmanship, material and design; (ii) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (iii) be fit for their intended purpose and operate as intended; and (iv) be merchantable.

(c) Seller warrants and covenants to deliver to Buyer Goods and Services that do not infringe or misappropriate any third party's patent or other intellectual property rights and will not infringe or otherwise misappropriate any such third-party rights when used by Buyer;

(d) Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with all industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; and

(e) Seller warrants that the Goods have been manufactured and all Services have been provided in compliance with all federal, state, and local laws, rules, regulations and ordinances directly applicable or otherwise made applicable by contract to Seller or Buyer, including but not limited to laws, rules, regulations and ordinances related to labor, health and safety, and the environment.

(f) The warranties set forth in this Section 12 survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer and will be construed as cumulative and in addition to any other express or implied warranty provided by law or equity.

13. General Indemnification. To the maximum extent permitted under applicable law, Seller shall defend, indemnify and hold harmless Buyer and Buyer's parent company, their respective, parent companies, subsidiaries, affiliates, successors or assigns along with each of their respective directors, officers, shareholders and employees, agents, and as applicable to the Goods or Services, each of their respective customer(s), prime contractor(s), and/or owner(s) (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") to the extent arising out of, related to, or occurring in connection with the Goods and Services purchased from Seller, Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's prior written consent. If any portion of this Section is for any reason held invalid or unenforceable by judicial decision or legislative amendment, the valid and enforceable provisions of this Section will continue to be given effect and shall be construed so as to provide the broadest indemnification permitted by law.

14. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

15. Insurance.

(a) Seller shall, at its own expense (including the cost of all deductibles and any self-insured retention), maintain in full force and effect with financially sound and reputable insurers the following coverages: (i) Marine General Liability or Commercial General Liability insurance, on a per occurrence basis, endorsed to cover premises, operations, products/completed operations, personal injury and contractual liability, with watercraft exclusions deleted and "in rem" coverage as may be applicable, with minimum limits of \$5,000,000 combined single limit per occurrence; (ii) Workers' compensation insurance with at least the minimum coverages and limits required by law for all of Seller's and any Permitted Subcontractors' respective employees, agents, performing the Services; (iii) Employer's liability insurance in an amount not less than \$5,000,000 per occurrence. Such insurance must provide coverage in the location in which Seller performs Services and in all jurisdictions where Seller regularly operates; (iv) all-risk first-party property insurance on all owned or leased property used by Seller in connection with a Purchase Order to the full replacement value thereof; (v) Automobile liability insurance, covering Seller's owned, rented, leased and hired vehicles, with limits of liability of not less than \$5,000,000 combined single limit per occurrence; (vi) If the Services involve or otherwise entail consulting or professional services, professional liability/errors & omissions liability insurance with limits not less than \$5,000,000 per occurrence; and/or (vii) If the Goods contain any hazardous substances or the Services involve or otherwise entail the handling, delivery, or removal of any hazardous substances or waste disposal, pollution insurance or environmental impairment insurance with limits of liability not less than \$5,000,000 per occurrence, and any other public liability or environmental impairment coverage that federal, state, or local regulatory authorities require.

(b) Each policy of insurance required to be obtained and maintained by Seller under this Agreement must include a waiver of subrogation in favor of Buyer and each of the Indemnitees, and (except for workers compensation and, if required, professional liability) must be endorsed to name Buyer and each of the Indemnitees as additional insureds. The minimum coverages required under this Agreement shall not be interpreted or otherwise serve to limit Seller's liability, and To the extent Seller obtains or maintains coverages or limits in excess of the minimum requirements set forth in this Agreement, Buyer and each of the Indemnitees shall be named as an additional insured with respect to the full limits actually maintained by Seller (including any excess layers). Seller shall, on Buyer's request, provide certificates of insurance evidencing coverages and limits required by this Agreement. Buyer's failure to request certificates of insurance or acceptance of certificates of insurance that do not show required coverages shall not be deemed a waiver of Seller's obligations to obtain and maintain the

coverages and minimum limits required by this Agreement.

16. Compliance with Law. Seller shall comply with all applicable laws, regulations and ordinances. Seller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Seller shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Seller. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties or tariffs on the Goods.

17. Termination.

(a) Buyer may terminate this Agreement, in whole or in part, for its convenience and without liability to Seller, by giving Seller written notice. If terminated for Buyer's convenience, Seller will stop all work immediately (or in the case of a partial termination, stop all work on that portion so terminated). In the event Buyer terminates for convenience, Seller's sole and exclusive remedy shall be payment for the Goods received and accepted prior to termination, the Services accepted by Buyer prior to termination, and recovery of Seller's actual documented costs incurred with respect to any Services partially performed or Goods partially completed prior to the date of termination that Seller cannot, through commercially reasonable efforts, repurpose, resell or otherwise beneficially use in Seller's ordinary course of business. At Buyer's option, Seller shall deliver any partially completed Services and Goods for which Buyer has paid to Buyer.

(b) In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement for cause and with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods or the seller's delivery of the Services, if Seller has not performed or complied with any of these Terms, in whole or in part (a "Default"). In addition, a Default shall be deemed to have occurred if the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. If Buyer terminates the Agreement for Seller's Default, Seller's sole and exclusive remedy shall be payment for the Goods received and accepted and Services accepted by Buyer prior to the termination.

18. Waiver. No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19. Confidential Information. All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, and any Buyer IP disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

20. Force Majeure. No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such party's (the "Impacted Party") failure or delay is caused by or results from the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, pandemics, epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action (except to the extent arising or resulting from the Impacted Party's violation of applicable laws); (e) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within five business days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted

Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 30 calendar days following written notice given by it under this Section 20, the other party may thereafter terminate this Agreement upon 5 business days' written notice.

21. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller's prior written consent to any affiliate or to any person acquiring all or substantially all of Buyer's assets.

22. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

23. No Third-Party Beneficiaries. Except as set forth in the following sentence, this Agreement benefits solely the parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever. Notwithstanding the foregoing, Seller acknowledges and agrees that each of the Indemnitees shall have a right to enforce the indemnification and insurance provisions set forth in these Terms, and that any customer, prime contractor(s), and/or owner(s) or any projects for which the Services or Goods are being contracted for by Customer as identified in a Statement of Work shall be entitled to rely on and benefit from all warranties and representations with respect to the Services set forth in this Agreement and any Statement of Work.

24. Governing Law and Disputes. The parties will make a good-faith effort to resolve any dispute arising under or relating to this Agreement through discussion and mediation. This Agreement will be construed and governed by the laws of the State of Oregon without regard to the conflict-of-laws provisions of any state. The state or federal courts located in Multnomah County, Oregon, will be the sole and exclusive forum for any claim arising out of or related to this Agreement, and each party waives all objections to the jurisdiction of such courts including on grounds of lack of personal jurisdiction or improper venue and agrees only to bring claims in such forum. Notwithstanding the prior sentence, either party may bring action to enforce a judgment or final order issued by a state or federal court located in Multnomah County, Oregon, in any jurisdiction.

25. Attorney Fees. If any suit or action is filed by a party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party will be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court and, if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

26. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the purchase order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

27. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

28. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement specifically including, but not limited to, the following provisions: Insurance, Indemnification, Compliance with Laws, Confidential Information, Governing Law and Disputes, and Survival.

29. Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.