

PURCHASE ORDER TERMS AND CONDITIONS

1. Only those terms and conditions set forth in this Purchase Order ("PO") shall be binding on Southland Industries ("Purchaser"). Any modification to these terms and conditions shall not be enforceable unless expressly agreed to in writing signed by an authorized representative of Purchaser. Seller expressly agrees that if any terms and conditions contained in any acknowledgement of this PO are different, inconsistent or in addition to the terms and conditions set forth herein, said terms and conditions are objected to by Purchaser and only the terms and conditions of this PO shall apply. Unless specifically incorporated herein by reference within the body of this PO, reference to Seller's invoice, time ticket, proposal, or change quotation does not imply and shall not constitute acceptance of any terms, conditions, or instruction contained in such document. Such reference shall be construed to be for record and accounting purposes only, and no terms and conditions stated in such communication shall be applicable to this PO and they shall not be considered to be Seller's exceptions to the provisions of this PO. Executing this PO, shipping any part of the goods, or commencing any labor covered by the PO shall constitute Seller's acceptance of the PO and these terms and conditions.
2. The Purchaser cannot and will not be responsible for any material received unless each package, case, etc., is clearly identified on its outer covering as to: (1) Seller, (2) Purchase Order Number, (3) Job Name, (4) Special Tagging or Identification called for on PO.
3. It is mutually agreed between the parties hereto, that no certificate given or payment made under this PO, except the final certificate or final payment, shall be conclusive evidence of the performance of the contract, either wholly or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials.
4. The Seller shall not sublet, assign, or delegate any performance owed under this PO or any portion hereof without written consent of the Purchaser, and the Seller shall employ only such labor as will enable the Purchaser to erect said materials at the building in harmony with all trades employed on this operation.
5. The material or equipment to be supplied pursuant to this PO shall, at the Purchaser's option, be subject to inspection and test at the Seller's work.
6. Materials rejected by the Purchaser or Owner shall be returned to the Seller at the Seller's expense.
7. Time is of the essence for the furnishing of all labor, material and equipment pursuant to this PO. Purchaser reserves the right to cancel without cancellation charges, all or any part of this PO if not performed 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 under the law for any delay or failure to deliver as specified.
8. The Seller agrees that if the Seller shall delay the material progress of the work being performed by Purchaser so as to cause any damage for which the Purchaser shall become liable, the Seller shall become responsible for any such damage and/or consequential loss resulting therefrom.
9. The Seller agrees to comply with any and all federal, state, county and municipal and/or other local regulations, laws, ordinances and enactments of whatever kind, applicable at the time of sale or which may become effective during the period of construction or fabrication, shipping and/or installation (if installation is included) of the materials identified under this PO.
10. Seller represents that he knows the particular purpose for which the goods are required and warrants that the goods shall be reasonably fit for such purposes and shall be of merchantable quality.
11. In the event approval is not secured from the Owner, or if the Owner's order for the purchase is canceled, this PO may be immediately cancelled without cancellation charges by the Seller; and no obligation shall exist on the part of the Purchaser toward the Seller. Cancellation compensation received by Purchaser on account of material or equipment ordered hereby shall be remitted to Seller.
12. The contract price appearing on this PO is final as to payment for the material covered by the specifically listed items, 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. 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.
13. Payment and discount periods shall commence only upon receipt of both the material and proper invoice or invoices at designations specified in this PO. The Purchaser reserves the right to return to the Seller for correction any and all invoices containing errors and/or that are inconsistent with this PO.
14. The Purchaser reserves the right to return to Seller at the invoice price all items which regularly are carried in Seller's stock.
15. Seller represents and warrants to Purchaser that all labor, material and/or equipment furnished under this PO meets all standards of the Occupational Safety and Health Act of 1970 and Construction Safety Act of 1969, as amended from time to time, and of applicable federal, state and local laws, regulations, standards or requirements pertaining to safety, as amended from time to time.
16. All labor, material and/or equipment furnished under this PO shall be guaranteed by the Seller against defects, and Seller agrees to replace without charge to Purchaser any defective work, material and/or equipment or remedy any defects, latent or patent, not due to ordinary wear and tear, or not due to improper use or maintenance, which may develop within the guarantee period set forth in applicable plans and specifications for the work being performed by Purchaser, and further, Seller shall promptly pay Purchaser for all consequential loss or damage resulting therefrom.
17. All labor, material and equipment furnished under this PO shall be subject to the approval of the architect, engineer, or any other party designated, and Seller shall furnish the required submittal data and/or number of samples for said approval. In the event such approval is not obtained the PO may be canceled, with no liability on the part of the Purchaser.
18. Any labor, material and equipment furnished hereunder shall be in strict accordance with plans, specifications and general conditions applicable to the work being performed by Purchaser with the Owner or another contractor, and Seller shall be bound thereby in the furnishing of material and equipment under this PO.
19. Seller shall guarantee equipment covered under this PO to produce capacities or meet design specifications and function: (1) as called for in the plans, specifications, or addenda for the work being performed by Purchaser; and (2) as herein set forth, and (3) as published or warranted by the manufacturer for the equipment involved. In the event the equipment does not meet the foregoing requirements, Seller shall immediately upon notice from Purchaser replace same or remedy any deficiency, without expense to the Purchaser; and further, Seller shall pay to Purchaser all consequential loss or damage resulting therefrom.
20. Seller agrees to defend, at its own cost and expense, and to indemnify and hold Purchaser harmless, from any and all claims, liability, loss, damage, expense, including attorneys' fees, and actions asserted or brought against Purchaser arising out of or relating to the furnishing of labor, material, or equipment pursuant to this PO and including without limitation (1) bodily injury, sickness, disease, death or injury to or destruction of property, including loss of use resulting therefrom; or (2) defects in the goods sold hereunder, whether in material, workmanship, design or otherwise; or (3) failure of such goods to conform to specifications, plans, drawings for the work being performed by Purchaser and other federal, state and local code requirements, samples or other descriptions referred to or attached to or contained in this PO; or (4) any infringement of any patent, trademark or copyright by reason of the sale or use of such goods; or (5) any act or omission of Seller or anyone directly or indirectly employed by Seller or anyone for whose acts Seller may be liable, or is caused by or arises out of the use of any labor, material or equipment furnished by Seller, regardless of whether it is caused in part by a party indemnified hereunder.
21. In the event labor is furnished in connection with this PO or if this PO requires the performance of work or services on the project site, Seller shall maintain workers' compensation insurance covering all of its employees; automotive liability insurance; and general liability and property damage insurance, including liability coverage for all work, contractual obligations, and products or completed operations; in limits at or above those provided in the contract documents comprising Purchaser's contract with Owner or another contractor. Seller shall furnish to Purchaser certificates of insurance evidencing the foregoing coverage and naming Purchaser as an additional insured. Seller's insurance shall be primary. Purchaser's written requirement to maintain the foregoing insurance coverages shall not derogate from the provisions for indemnification by Seller herein.
22. 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 PO. Purchaser shall be entitled at all times to set-off any amounts owing from Seller to Purchaser or any of its affiliated persons or entities, including but not limited to any and all costs and attorneys' fees incurred by Purchaser to remove or release any lien or claims for lien, against any amount due or owing to Seller with respect to this PO.
23. All prior representations, conversations, or preliminary negotiations whether written or oral shall be deemed to be merged in this PO, and no changes will be considered or approved unless this PO is modified by an authorized representative of the Purchaser in writing.
24. In the event of 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, expert fees and costs of suit incurred by Purchaser to enforce the terms and conditions of this PO.
25. This PO and all matters affecting its validity, construction, and performance shall be governed by and construed in accordance with the laws of the jurisdiction in which the office of Purchaser issuing this PO is located, and all claims, disputes, and other matters in question arising out of or relating to this PO shall be decided by litigation in an appropriate state court in that jurisdiction.
26. If any part or provision of this PO shall to any extent be deemed invalid or unenforceable, the remainder of the PO shall not be affected thereby, and each term and provision of this PO shall be valid and enforceable to the fullest extent permitted by law.
27. **Purchaser is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex,**

sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

28. Notwithstanding the foregoing, if a master agreement covering procurement of the labor, materials and/or equipment described in the Purchase Order is in effect between Purchaser and Seller, this Purchase Order shall be governed exclusively by the terms and conditions of such existing contract.