

**BUTLER-COHEN LLC MASTER PURCHASE ORDER  
TERMS AND GENERAL CONDITIONS**

Vendor : \_\_\_\_\_ Date: \_\_\_\_\_  
Address : \_\_\_\_\_  
City, State, Zip : \_\_\_\_\_ Phone: - \_\_\_\_\_

Buyer may, from time to time, desire to purchase from Seller Materials and/or Equipment of the same or similar nature of those described in the Purchase Order attached hereto, on other projects, under the same general terms and conditions as those set out herein, and Seller is desirous of providing such Materials and/or Equipment for Buyer on a repeat basis, pursuant to an expedited contracting procedure.

In the event Buyer elects, in its sole discretion, to purchase from Seller such other Materials and/or Equipment, Buyer shall issue to Seller a Purchase Order describing the project, Materials and/or Equipment and Purchase Order Amount, in the form attached hereto as Exhibit "1". Seller's execution and return of such Purchase Order, or Seller's commencement of shipment or service thereunder, whichever occurs first, shall constitute Seller's acceptance of the Purchase Order and the terms and conditions set out therein, subject to these Master Purchase Order Terms and General Conditions, which shall apply thereto.

These Master Purchase Order Terms and General Conditions shall remain in full force and effect as to, and shall govern any and all Materials and/or Equipment provided by Seller pursuant to any Purchase Order issued by Buyer for a period of one year from the date of this agreement (the "Master Purchase Order Term"), and the Master Purchase Order Term shall thereafter be automatically extended on a month-to-month basis, absent thirty (30) days written notice of termination for convenience by Buyer or Seller, except that any shipment or service commenced by Seller during the Master Purchase Order Term shall be governed by these Master Purchase order Terms and General Conditions. Nothing contained in this paragraph, however, shall be construed as a limitation of Buyer's other termination and cancellation rights under these Master Purchase Order Terms and General Conditions.

It is agreed and understood that Buyer may utilize others to provide Materials and/or Equipment of the nature described herein, that Buyer has made no representations or promises with respect to Seller's providing any other Materials and/or Equipment for Buyer, and that Seller has no exclusive right or option to provide any such Materials and/or Equipment. It is further agreed and understood that in the event Seller defaults under any Purchase Order issued by Buyer, such default shall be considered an act of default under all Purchase Orders issued by Buyer to Seller, and Buyer shall be entitled to offset against any sums due and owing to Seller under any Purchase Order, any and all damages incurred by Buyer as a result of Seller's default, in addition to Buyer's other rights and remedies hereunder, at law or in equity.

1. As used herein, the term "Order" shall refer to each Purchase Order issued from Buyer to Seller under these Master Purchase Order Terms and General Conditions, which are incorporated therein and a part thereof, and all of such Purchase Order's attachments and exhibits, if any; the term "Contract" shall refer to the agreement between Buyer and Owner or any other contractor; the term "Materials and/or Equipment" shall refer to any materials, machinery, equipment, fixtures, articles, items or work provided for in the Order; the term "Breach" shall refer to the violation or abrogation of any of the terms of the Order after acceptance of said Order by Seller; the term "Seller" shall refer to the person, firm, corporation, partnership or other entity to whom the Order is issued; the term "Buyer" shall refer to **Butler-Cohen LLC** and the term "Owner" shall refer to the owner of the premises to which the Materials and/or Equipment are delivered. Except where otherwise expressly stated in the Order, all terms herein employed shall have the same meaning as set forth in the Texas Business and Commerce Code in effect in on the date of execution by Buyer of the Order.

2. The acceptance of each Order is expressly limited to the terms and conditions stated therein unless modified in writing by Buyer. By signing the Order, or by in any way commencing performance thereunder, Seller accepts all of the terms and conditions herein. All previous offers by Seller have been or are hereby rejected. Buyer shall not be bound by terms additional to or different from those contained in the Order that may appear in Seller's quotations, acknowledgements, invoices, or any other communication from Seller, unless such terms are expressly agreed to in writing signed by Buyer. Upon acceptance by the Seller, the Order shall constitute a valid and binding contract between the parties hereto and shall be governed by and construed according to the laws of the State of Texas. The Order is intended by the parties hereto as the final expression of their agreement and is the complete and exclusive statement of the terms thereof. All negotiations, proposals, understandings and agreements prior to the date of the Order are merged therein and superseded thereby. The Order shall also govern over any provision set forth or referred to in Buyer's drawings and specifications in the event of conflict therewith.

3. If, upon receipt of the Order or at any time thereafter, it is found that the Materials and/or Equipment cannot be shipped within the time specified in the Order, notice thereof must be given immediately by Seller to Buyer by mail, facsimile or electronic mail, together with advice as to the best delivery possible. Failure to deliver on or before the date specified in the Order shall entitle Buyer, at its option, to cancel the Order, without prejudice to any other rights Buyer may have as a result thereof.

4. Seller WARRANTS that all Materials and/or Equipment furnished under the Order shall conform to all express warranties, descriptions, samples, models, promises and affirmations of fact relating to the Materials and/or Equipment furnished thereunder and shall be in accordance with the manufacturer's specifications as well as the applicable Plans and Specifications supplied by Buyer. Seller WARRANTS that all Materials and/or Equipment shall be delivered to Buyer free of any security interests, liens, claims of liens, or other encumbrances and that all Materials and/or Equipment shall not infringe any valid United States patent. Seller expressly warrants that the Materials and/or Equipment shall be merchantable and shall be fit for the purpose for which such goods are ordinarily intended and agrees that there shall be no disclaimer of any express or implied warranties, including, but not limited to, implied warranties of fitness for ordinary purposes, fitness for a particular purpose, merchantability, and good quality and workmanship. Seller agrees to replace, without charge to Buyer, any defective Materials and/or Equipment and to remedy any defects not due to ordinary wear and tear for a period of one (1) year after the commencement of use of said Materials and/or Equipment, or within the guaranty period set forth in the applicable plans and specifications, whichever is longer; however, nothing

herein shall be construed as in any way limiting Buyer's other rights and remedies with respect to any defective Materials and/or Equipment or to replacement thereof.

5. Materials and/or Equipment furnished under each Order (a) shall be in strict compliance with the warranties by Seller contained therein and with the plans and specifications applicable to Buyer's contract with the Owner or another contractor which Seller warrants it has reviewed to the extent applicable to the Order, (b) shall be subject to the approval of the Owner's agents, and (c) Seller shall submit the required number of designated submittal data and/or samples within the time designated. Should Seller fail to meet the requirements of (a) or (b) or (c) of this paragraph, Buyer may elect (1) to cancel the Order without liability on the part of Buyer, and, if Buyer so chooses, Buyer shall have the right to effect cover and may proceed to purchase Materials and/or Equipment in substitution for that due under the Order from the Seller, in which event, Seller shall be liable to Buyer for the difference between the cost of such substitution and the Order price, together with all incidental and consequential loss or damages incurred by Buyer, or (2) to notify Seller of the deficiencies with respect to (a) or (b) or (c) of this paragraph and require Seller to correct the same, in which case the Seller shall remedy the same without expense or liability on the part of Buyer and shall further pay Buyer all incidental and consequential loss or damages resulting therefrom, or (3) Buyer may proceed upon seven (7) days' notice to Seller to cure and correct the deficiencies with respect to (a) or (b) or (c) of this paragraph without liability on the part of the Buyer, in which event Seller shall reimburse Buyer for the cost of curing and correcting said deficiencies and all incidental and consequential loss or damages incurred by Buyer resulting therefrom, or (4) Buyer may return the deficient Material and/or Equipment and, at Buyer's option, request that Seller either refund to Buyer the money and other consideration paid by Buyer for said deficient Materials and/or Equipment or furnish substitute goods subject to the terms and conditions of the Order, and in either event Seller shall reimburse Buyer for the cost of returning said deficient Materials and/or Equipment and all incidental and consequential loss or damages incurred by Buyer resulting therefrom. Nothing contained in the Order, however, shall be construed as limiting or waiving any rights, remedies or causes of action which Buyer may have in addition to the above-enumerated elections, nor shall anything herein be construed as in any way limiting or waiving Buyer's rights and remedies arising from any and all express and implied warranties, including but not limited to, warranties of merchantability, fitness for ordinary purposes, fitness for particular purposes, and good quality and workmanship.

6. When indicated, shipment will be made by the method, carrier and/or routing specified on the front of the Order. The Materials and/or Equipment covered by the Order shall remain the property of the Seller, and the risk of loss from any casualty to or destruction of the Materials and/or Equipment regardless of the cause of the casualty or destruction shall be on the Seller, until delivered to the specified destination and accepted by Buyer and any damage to the Materials and/or Equipment or loss of any kind occurring prior to such delivery to and acceptance by Buyer shall be borne by the Seller, notwithstanding the inclusion in the Order, acknowledgement or shipping instructions of such technical expressions as F.O.B., Freight Prepaid, F.O.B. Origin With Freight Allowed, or variations of such expressions, and notwithstanding the manner in which the goods are shipped and the payment of transportation costs. Any such loss, injury or destruction of the Materials and/or Equipment borne by Seller shall not release Seller from any of its obligations under the Order.

7. Seller shall protect, indemnify, defend and save harmless Buyer and the customers of Buyer from and against all claims, liability, loss, damages or expense, including attorneys' fees arising out of any actual or alleged infringement of any patent or license covering any Materials and/or Equipment purchased hereunder. Seller shall defend any actions brought against Buyer for any such claim, and Seller shall bear all costs, expenses and attorneys' fees of Buyer in defense of any such action, and Seller shall pay any judgments that may be awarded against Buyer. Buyer may participate in, or take control of, the defense of any such claim or action.

8. **TIME OF DELIVERY IS OF THE ESSENCE TO THE ORDER.** If the Order is not filled within the time specified on the front of the Order, Buyer may, without liability or charge, cancel all or any part of the Order and, if Buyer so chooses, Buyer shall have the right to effect cover and may proceed to purchase Materials and/or Equipment in substitution for that due under the Order from the Seller, in which event, Seller shall be liable to Buyer for the difference between the cost of such substitution and the Order price, together with all incidental and consequential loss or damages incurred by Buyer. Such right of cancellation shall not be deemed a waiver of any other rights reserved to Buyer herein or by law for a delay or failure to deliver as specified.

9. Seller shall furnish, if requested by Buyer, all necessary lien waivers, affidavits or other documents required and in a form acceptable to Buyer to keep Owner's premises free from liens or claims of liens, arising out of the furnishing of the Materials and/or Equipment pursuant to the Order. Such lien waivers, affidavits or other documents so requested may be conditioned upon receipt of payment for Materials and/or Equipment covered thereby if payment has not been received by Seller. Any such waiver and release of lien shall substantially comply with one of the forms prescribed by Section 53.284 of the Texas Property Code, and shall be notarized.

10. Seller shall not, in any way, assign or transfer the Order, or any part hereof, or any amount due and payable or to become due and payable thereunder or delegate any obligation imposed upon Seller by the Order, without the written consent of Buyer and any such assignment or transfer or delegation without such written consent of Buyer shall be null and void and shall constitute a Breach.

11. Seller warrants, represents and covenants that the goods supplied hereunder were manufactured, produced, and sold in compliance with applicable federal, state, and municipal laws, codes and regulations and that the price includes payment of all fees, royalties, and expenses connected with such compliance, and further agrees to indemnify, defend and hold harmless Buyer from the payment of any penalty under such laws, codes and regulations. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Order, this provision to indemnify, defend and hold harmless shall not apply to the extent that it requires Seller to indemnify, defend or hold harmless Buyer against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of Buyer, its agent or employee, or any third party under the control or supervision of Buyer, other than Seller or its agent, employee or subcontractor of any tier. Seller shall submit two copies of all Hazardous Material Data Sheets for Buyer's use in accordance with OSHA requirements for Hazardous Communications Program. Seller shall follow all OSHA regulations and all of Buyer's safety procedures at the job site.

12. Whenever applicable, Seller agrees to comply with all state and federal legislation and executive orders respecting equal employment opportunity and all regulations promulgated thereunder. Upon request by Buyer, Seller will execute compliance statements in a form acceptable to Buyer certifying Seller's compliance with all applicable equal employment opportunity legislation, orders and regulations. Failure to properly and timely execute such compliance statements may, at the option of Buyer, be deemed to constitute Breach, in which event, the election of remedies available to Buyer in Paragraph 5 of these Master Purchase Order Terms and General Conditions shall apply.

13. Each Order shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs, administrators, executors, and legal representatives, provided that nothing contained in this paragraph

shall be construed so as to authorize Seller to make any assignment or transfer or delegation of the Order. Buyer is authorized to assign or transfer the Order at any time.

14. (a) **Indemnity Agreement.** EXCEPT WITH RESPECT TO CLAIMS RELATING TO BODILY INJURY OR DEATH OF AN EMPLOYEE AS DEFINED IN THE PARAGRAPH BELOW, SELLER AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS (COLLECTIVELY "INDEMNIFY") BUYER, ITS PARTNERS, MEMBERS, DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES, AND ANY PARTIES REQUIRED TO BE INDEMNIFIED BY BUYER UNDER THE CONTRACT (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, INJURIES, JUDGEMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES (COLLECTIVELY "CLAIMS"), FOR ECONOMIC LOSS, AND FOR BODILY OR PERSONAL INJURIES, INCLUDING DEATH, TO ANY PERSON OR DAMAGES TO OR DESTRUCTION OF PROPERTY, INCLUDING THE LOSS OF USE THEREOF, ACTUALLY OR ALLEGEDLY OCCASIONED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE MATERIALS AND/OR EQUIPMENT OR THE ORDER, INCLUDING BUT NOT LIMITED TO CLAIMS OCCASIONED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, VIOLATION OF ANY STATUTE, RULE OR REGULATION OR OTHER ACT OR OMISSION BY SELLER, ITS EMPLOYEES, AGENTS OR ANY SUBCONTRACTOR OF SELLER OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, OR ANY OTHER PARTY FOR WHOSE ACTS SELLER IS LIABLE, AND INCLUDING BUT NOT LIMITED TO ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES INCURRED BY THE INDEMNIFIED PARTIES IN DEFENSE OF SUCH CLAIMS. SELLER'S OBLIGATION TO INDEMNIFY SHALL APPLY EVEN IF SUCH CLAIMS ARE ACTUALLY OR ALLEGEDLY CAUSED IN PART BY THE STRICT LIABILITY, OR THE ACTS, OMISSIONS, OR NEGLIGENCE OF AN INDEMNIFIED PARTY, EVEN IF SUCH NEGLIGENCE OR OTHER ACTS OR OMISSIONS ARE ACTIVE OR PASSIVE, DIRECT OR INDIRECT, JOINT OR CONCURRENT. THIS INDEMNITY AGREEMENT IS INTENDED TO INDEMNIFY THE AFOREMENTIONED INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, AS PROVIDED ABOVE. NOTWITHSTANDING THE FOREGOING, IF SUBCHAPTER C OF CHAPTER 151 OF THE TEXAS INSURANCE CODE APPLIES TO THE ORDER, THIS INDEMNITY PROVISION SHALL NOT APPLY TO THE EXTENT THAT IT REQUIRES SELLER TO INDEMNIFY AN INDEMNIFIED PARTY AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE INDEMNIFIED PARTY, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNIFIED PARTY, OTHER THAN SELLER OR ITS AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER.

**INDEMNITY FOR EMPLOYEE CLAIMS:** SELLER AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS (COLLECTIVELY "INDEMNIFY") BUYER, OWNER AND ANY OTHER PARTIES REQUIRED TO BE INDEMNIFIED BY BUYER UNDER THE CONTRACT AND THEIR REPRESENTATIVES, PARTNERS, MEMBERS, DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, INVITEES OR LICENSEES (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, INJURIES, JUDGEMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES (COLLECTIVELY "CLAIMS") , FOR BODILY INJURY OR DEATH OF ANY EMPLOYEE OF SELLER, ITS AGENTS, OR ITS SUBCONTRACTORS OF ANY TIER (COLLECTIVELY "EMPLOYEE" FOR THE PURPOSE OF THIS SECTION), ACTUALLY OR ALLEGEDLY OCCASIONED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE MATERIALS AND/OR EQUIPMENT OR THE ORDER, INCLUDING BUT NOT LIMITED TO CLAIMS DUE TO NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, VIOLATION OF ANY STATUTE, RULE OR REGULATION OR OTHER ACT OR OMISSION BY SELLER, ITS EMPLOYEES, AGENTS OR ANY SUBCONTRACTOR OF SELLER OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, OR ANY OTHER PARTY FOR WHOSE ACTS SELLER IS LIABLE. SELLER'S OBLIGATION TO INDEMNIFY SHALL APPLY EVEN IF SUCH CLAIMS ARE ACTUALLY OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, OR NEGLIGENCE OF AN INDEMNIFIED PARTY EVEN IF SUCH NEGLIGENCE OR OTHER ACTS OR OMISSIONS ARE ACTIVE OR PASSIVE, DIRECT OR INDIRECT, SOLE OR CONCURRENT. THIS INDEMNITY AGREEMENT IS INTENDED TO INDEMNIFY THE AFOREMENTIONED INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, AS PROVIDED ABOVE.

**Seller's obligation to Indemnify is in no way limited to or by the extent of insurance coverage carried by Seller.**

14. (b) In any case where it is necessary for employees, agents or representatives of Seller to go upon the premises of Buyer and/or Owner, Seller agrees to assume full responsibility for the proper conduct of such employees and representatives while on said premises and to comply with all applicable worker's compensation laws, other applicable laws and regulations and ordinances and all project rules and regulations, and Seller shall furnish Buyer with a certificate or other evidence satisfactory to Buyer indicating that such labor is adequately covered by worker's compensation insurance and employer's liability insurance with limits acceptable to Buyer. Any such certificate of insurance shall be on a form filed with and approved or deemed approved by the Texas Department of

Insurance, and Buyer may rely on the certificate of insurance as a confirmation that the referenced insurance policy has been issued or that coverage has been bound.

15. All inspections and tests for Materials and/or Equipment furnished hereunder shall be made as required by specifications furnished by Buyer. All materials and/or Equipment furnished under each Order shall be subject to inspection by Buyer, Owner or representative or agent of Buyer or Owner at all reasonable times and places before, during and after manufacture. Neither the presence or absence of any inspector or other personnel of Buyer or Owner in Seller's facilities shall relieve the Seller from any requirements of the Order. Notwithstanding any prior inspection, the passage of title, or any payments hereunder, all Materials and/or Equipment shall be received subject to Buyer's and Owner's final inspection and acceptance at the job site. If common carrier is utilized for shipment and can not allow the time, or it is not feasible for a complete itemized inspection of the delivered goods, the material receipt will be noted "received but not checked." If so noted we will make written notification of discrepancies within three weeks. Where items are received and discrepancies and/or deficiencies are not able to be discovered until the goods are put into operation, then the period of notification will be extended accordingly for the appropriate amount of time. Efforts by the Buyer to cure and correct any deficiencies in the Materials and/or Equipment delivered to Buyer in a defective condition shall not constitute acceptance of the Materials and/or Equipment by the Buyer and the Buyer may reject the deficient Materials and/or Equipment if the Buyer's attempt to cure and correct the deficiencies proves to be unsuccessful.

16. Defective Materials and/or Equipment delivered in error or in excess of the quantity called for shall, if directed by Buyer, be removed by Seller at Seller's expense.

17. The Seller, as required by Buyer, shall prepare and submit to the Buyer such shop drawings (or other submittals) as may be necessary to describe completely the details of the work or the goods submitted by Seller. Approval of such submittals by Buyer and/or Owner (or Owner's representative) shall not relieve Seller of its obligation to perform work in strict accordance with the Plans and Specifications. Seller shall provide the number of copies of the submittals to the Buyer as requested. Failure of Seller to provide submittals required by Buyer shall entitle Buyer to elect any of the remedies contained in Paragraph 5. without prejudice to any other rights and remedies Buyer may have at law.

18. In the event that the goods ordered hereunder require, in connection with the installation thereof, the services of a supervisor, expert, or other employee connected with or employed by Seller, Seller agrees to furnish the same, without additional charge. It is understood that such individual shall not, while performing his duties with respect to the goods covered by the Order, be deemed an agent or employee of Buyer and the Seller will assume full responsibility for all acts and omissions of such party.

19. Buyer reserves the right to change specifications and to change the Order, such changes to be made only by duly authorized representatives of Buyer. Seller shall notify Buyer of any differences in costs resulting from such changes before proceeding and receive Buyer's agreement to any such change in writing. Such cost differences shall be equitably adjusted and the Order shall be altered in writing accordingly.

20. Buyer reserves the right to cancel without liability all or any part of the Order for any Breach of any and all warranties of Seller. No waiver of any Breach of the Order shall be held to be a waiver of any succeeding breach of the same or any other term or condition contained in the Order. All rights and remedies afforded Buyer under the Order or by law shall be construed as cumulative.

21. If Seller ceases to conduct its operations in the normal course of business, shows inability to meet its obligations as they mature, or if any proceedings under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed, applied for, or an assignment for the benefit of creditors is made by Seller, or if Seller is unable to provide adequate assurances of future performance, Seller shall be in Breach hereof and Buyer may terminate any Order without liability except for deliveries previously made and for Materials and/or Equipment covered by the Order then completed and subsequently delivered in accordance with the provisions of the Order.

22. Seller shall pay, and the price includes, all sales, use, excise and other taxes payable or collectable by Seller, unless a different provision for such taxes is expressed in the typewritten terms of the Order.

23. The terms and conditions of each Order shall be construed and interpreted under, and all respective rights and duties of the parties shall be governed by, the laws of the State of Texas. If any provision or requirement of any Order is declared or found to be unenforceable, the balance of the Order shall be interpreted and enforced as if the unenforceable provision or requirement was never a part hereof. Each Order is considered performable in Harris County, Texas for venue purposes. Exclusive venue and jurisdiction for any dispute arising from or related to the Order or any right, duty, or obligation created in whole or in part by the Order shall be Harris County, Texas.

24. Arbitration.

a. All claims, disputes and other matters in question arising out of or relating to the Order, or the breach thereof, may, at Buyer's sole option, be decided by litigation or arbitration. If Buyer selects Arbitration, it shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Further, Seller agrees that in the event Owner or another contractor and Buyer are involved in an arbitration arising out of or relating to the Contract which pertains in whole or in part to the Materials and/or Equipment furnished by Seller under the Order, Seller shall, by consolidation, join in the said arbitration and any such claims, disputes or other matters shall then be determined in the consolidated arbitration proceeding.

b. This agreement to arbitrate shall be specifically enforceable. Any arbitration proceeding between Buyer and Seller shall, at Buyer's option, be held in Harris County, Texas.

c. The award rendered by the arbitrators shall be final and conclusive, and judgment may be entered upon it in accordance with the applicable law in the court having jurisdiction thereof.

25. Attorney's Fees and Costs. If Buyer is forced to institute court or arbitration proceedings for the enforcement of any Order or recovery for any Breach hereof, Buyer shall be entitled to recovery of all expenses incurred in connection with such action, including attorney's fees, interest, court costs, arbitration fees, witness', reporter's, and consultant fees. Seller shall reimburse Buyer for Seller's proportionate share of the costs incurred by Buyer to recover, or attempt to recover, from Owner payment for Seller's work or payment for any claims asserted by Seller against Buyer and passed through to the Owner by Buyer. Seller agrees that such costs may be offset against payments otherwise due Seller under the Order, or any other agreement between the Parties. Nothing herein shall require Buyer to institute such proceedings and Seller does not require Buyer to obtain Seller's consent to any settlement with Owner, in the event Buyer elects to institute proceedings against Owner.

26. If the goods are standard items manufactured or sold by Seller, title shall pass to Buyer immediately upon execution of the Order. If the goods are to be made for the Order, title to all goods covered by the Order and to all materials inventory, work in process, design data, and other documentation, and all contract rights related to such goods, shall vest in Buyer immediately upon identification to the Order, subject only to Buyer's obligations to pay the price and perform all other obligations hereunder.

Irrespective of vesting of title, Seller shall bear all risk of loss, and shall insure or self-insure all goods of Buyer in its care and custody or control until delivered in good condition, and accepted by Buyer. Seller warrants title and that good title free of claims or encumbrances is vested in Buyer.

27. Time is of the essence and Seller agrees to promptly submit certified drawings, brochures, samples, data and other submittal information in sufficient quantities and types to enable Buyer to fulfill its obligation to the project Owner. Failure by Seller to so perform shall constitute a material Breach of the Order and Buyer may avail itself of the remedies provided in Article 5 hereof.

28. Seller, at the option of Buyer, agrees to submit any invoice on a form and with certification as supplied by Buyer. Seller shall render separate invoices for each and every shipment to Buyer. Invoices shall reflect the Order number, partial or final invoice, quantity, description and price of goods delivered, separate charges for taxes or other charges as agreed. If the terms of the Order provide for the purchase of goods on a unit price basis, the unit of measure for payment shall be one for which certified verification of weights or quantities can be furnished at the time of delivery. Otherwise, Seller agrees that Buyer is without means of ascertaining the accuracy of volumetric or other units of measure at the point and time of load delivery, and agrees that receipt of load tickets by Buyer's representative at the point of delivery does not constitute acceptance of Seller's quantities for payment purposes. In the event that parties fail to agree on the actual quantities delivered, Buyer shall have the right to measure quantities of work in place and make final settlement on the basis of such measurement. Incorrect invoices will be returned to Seller for correction and resubmission. Seller acknowledges that its Buyer's practice to include Seller's verifiable invoice amounts in Buyer's payment applications to the Owner. In the event Seller fails to submit timely payment applications to Buyer and Buyer is unable to request and receive payment for Seller's work because of Seller's failure to timely submit a payment application, Seller hereby waives and releases its rights with respect to the payment of those untimely invoices.

29. In receiving payment hereunder, Seller agrees to apply such payment only against the Order, and only against the account of Buyer on or for this project. Seller shall promptly pay all costs and expenses incurred in the performance of the Order as they become due and shall furnish satisfactory evidence and verification of payment when requested by Buyer. Seller shall indemnify, defend and hold harmless Buyer, project Owner, and the property upon which the Buyer's work is being performed from liens and claims of workers, mechanics, or materialmen arising from the Order. Buyer may require prior to making any payment that Seller deliver written releases or waivers of all rights to assert any liens, charges or claims for additional compensation upon project. Any such waiver and release of lien shall substantially comply with one of the forms prescribed by Section 53.284 of the Texas Property Code, and shall be notarized. Buyer may withhold any payment due hereunder to such extent as may be necessary to protect Buyer from loss because of a reasonable doubt that the goods will meet requirements of the Order or because of breach by Seller of any of the provisions of the Order. Unless expressly stated herein, invoices dated prior to delivery of goods to be supplied hereunder will not be accepted by Buyer. Buyer shall make payments to Seller on a net 30 basis after receipt of invoice unless otherwise stated on the face of the Order. The amount of payment shall be equal to the value of goods delivered by Seller during the previous period as approved and paid for by project Owner less discount and/or retainage as provided in the Order. Receipt of payment by Buyer from Owner (or other customer(s) of Buyer) shall be a condition precedent to all payments that may be due Seller. Any amount tentatively earned by Seller shall not become due or payable to Seller or anyone else claiming in Seller's place (including but not limited to a Trustee in Bankruptcy, receiver, assignee, or surety of Seller), until and unless Seller has fully completed all of the terms of the Order and all offsets have been accounted for, including but not limited to backcharges due Buyer from Seller or any payments made to Seller's unpaid laborers and material suppliers.

30. In the event Owner fails to pay Buyer for Materials and/or Equipment provided by Seller in accordance with the Order, or any claims properly asserted by Seller in accordance with the Order and passed through to Owner by Buyer, and any payment provision herein that provides that Buyer's receipt of payment from Owner is a condition precedent to the obligation of Buyer to pay Seller, including the one set forth in this Article 29 above, is determined to be unenforceable by a final, non-appealable adjudication by a Court or arbitrator (such date herein referred to as the "CPC Adjudication Date"), Buyer shall pay Seller for its Materials and/or Equipment (or claim) that was not paid for by Owner within a reasonable amount of time. In such event, the Parties agree that a reasonable amount of time shall be 60 days following the date of final adjudication of Buyer's claims against Owner or the date any settlement between Owner and Buyer becomes effective. In the event the date of final adjudication of Buyer's claims against Owner or the date any settlement between Owner and Buyer becomes effective precedes the CPC Adjudication Date, the Parties agree that a reasonable time for payment shall be 60 days after the CPC Adjudication Date. In the event Buyer does not pursue claims against the Owner for non-payment of Materials and/or Equipment provided by Seller in accordance with the Order, or for claims properly asserted by Seller in accordance with the Order, a reasonable time for payment shall be 60 days following the CPC Adjudication Date. Notwithstanding the above, nothing herein shall require the Buyer to pursue any claims against Owner.

31. **FINAL PAYMENT:** Final payment shall be due when all goods have been delivered in accordance with the Order, including furnishing all manuals, instructions, warranties, spare parts, tools, parts lists, etc., and when the goods have been accepted by Buyer and Owner. Buyer may, at its option, require Seller to procure and furnish to Buyer a full and complete release of liens from all persons furnishing labor and/or materials toward performance hereof or, at the option of Buyer, a satisfactory surety bond indemnifying Buyer against any claims based thereon. Any such waiver and release of lien shall substantially comply with one of the forms prescribed by Section 53.284 of the Texas Property Code, and shall be notarized. Acceptance by Seller of final payment shall constitute a release of all claims against Buyer, project Owner, and the property upon which the Buyer's work is being performed for Materials and/or Equipment furnished, regardless of whether Seller shall have executed a written release.

SELLER: \_\_\_\_\_

PURCHASER: Butler-Cohen LLC

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: Manager

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_