

WACKER NORTH AMERICA CONDITIONS OF THE PURCHASE ORDER (GOODS AND SERVICES)

1. **CONDITIONS OF PURCHASE.** These Conditions of The Purchase Order (the "Conditions") apply to all goods and/or services purchased by Buyer (as defined herein below), except as expressly set forth in Section 21 herein. The selling entity, identified on the face of this purchase order as Seller ("Seller"), shall be deemed to have accepted Buyer's purchase order, including these Conditions (collectively, the "Purchase Order") by (i) Seller's signing and returning to the WACKER entity identified on the face of the Purchase Order ("Buyer") the acknowledgment copy of this Purchase Order, or (ii) Seller's shipment of any of the ordered goods or performance of any of the ordered services, whichever occurs first. The terms of the purchase and sale are expressly limited to the terms of the offer contained herein, including these Conditions, all as presented to Seller by Buyer. In the event of any conflict between the terms of this Purchase Order, and the acknowledgment or confirmation copy of the Purchase Order, the terms most favorable to Buyer shall control. Any proposal for additional or different terms, and any effort by Seller to vary the terms of this offer, is hereby objected to and rejected. Any such proposal or effort by Seller shall not, however, operate as a rejection of this offer unless such variance is in the terms of the description, quantity, price, or delivery schedule of the goods and/or services; in all other events the proposal by Seller shall be deemed a material alteration of this Purchase Order, and this offer shall be deemed accepted by Seller without said additional, different, or varied terms. If this Purchase Order is deemed an acceptance of a prior offer by Seller, such acceptance is expressly conditioned upon Seller's assent to the terms contained herein. The Seller's quotation or proposal (if any) is made a part hereof only to the extent that it is consistent with this Purchase Order and accepted in a writing signed by Buyer.

2. SELLER'S OBLIGATIONS.

A. Seller shall provide the goods and services to Buyer as described in the Purchase Order, and as may be further described in the Specifications (as defined in Section 3) set forth in Purchase Order, including any attached hereto and incorporated herein, all in accordance with these Conditions.

B. Before the services start, Seller shall obtain, and at all times maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the services, and 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.

C. Seller shall comply with all rules, regulations and policies of Buyer, including Buyer's environmental, health, and safety rules (which will be provided to Seller upon Seller's request) and the restriction of access, if any, by Buyer to certain areas of Buyer's premises or systems for security reasons.

D. Seller shall keep and maintain complete and accurate records relating to the goods and/or services under this Purchase Order, including those of time spent and materials used by Seller in providing the goods and services. During the provision of any goods or services, and for a period of two years thereafter, upon Buyer's written request, Seller shall allow Buyer to inspect and make copies of such records and interview Seller personnel in connection with the provision of the goods and services.

E. Seller shall obtain Buyer's written consent, which shall not be unreasonably withheld or delayed, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller's employees, to provide any goods and services to Buyer (each such approved subcontractor or other third party, a "Subcontractor"). Buyer's approval shall not relieve Seller of its obligations under the Purchase Order, and Seller shall remain fully responsible for the performance of each such Subcontractor and its employees and for their compliance with all of the terms and conditions of this Purchase Order as if they were Seller's own employees. Nothing contained in this Purchase Order shall create any contractual relationship between Buyer and any Subcontractor or any supplier of Seller.

F. Seller shall require each Subcontractor to be bound in writing by the confidentiality and intellectual property assignment or license provisions of this Purchase Order, and, upon Buyer's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Buyer.

G. Seller shall ensure that all of its equipment used in the provision of the goods and 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.

H. If Seller shall be required to remove any of Buyer's equipment from Buyer's property for any reason, then Seller shall be required to use and hold such equipment on a bailment basis as a bailee-at-will at all times such equipment is removed from Buyer's property.

3. WARRANTIES.

A. Seller warrants that all goods purchased and delivered hereunder (i) shall be merchantable in the trade as goods strictly of the kind and quality described on the face hereof; (ii) shall be of good quality and free from all latent and patent defects in design, workmanship, and materials; (iii) shall be safe for their intended use; (iv) shall be fit for the particular purposes for which they are purchased; (v) shall be adequately packaged, marked, and labeled in accordance with Buyer requirements and all applicable laws, (vi) are free of any claim or lien; (vii) and shall strictly conform to the specifications and/or samples, drawings, designs, scope of work, or other requirements (including performance specifications) approved or adopted by Buyer (collectively, the "Specifications"). Such Specifications, as identified on the face of the Purchase Order and/or attached hereto, or as otherwise agreed upon in writing by Buyer, are incorporated herein. Seller further warrants that the sale of all goods hereunder does not violate any patents, trademarks, copyrights, or intellectual property rights. Seller will convey clear title to the all goods purchased hereunder to the Buyer upon Buyer's acceptance of such goods.

B. Seller represents and warrants that all services furnished hereunder shall be performed in a good and workmanlike manner and in accordance and compliance with (i) the Specifications, and other descriptions referenced herein; (ii) Buyer's environmental, health, and safety rules and procedures (which will be provided to Seller upon Seller's request); (iii) at least the skills, degree, and standard of care necessary for performing similar services at similar facilities; (iv) all applicable laws, rules, and regulations. Seller further represents and warrants that all services furnished hereunder will be free of any claim or lien of any nature by Seller, its subcontractors, suppliers, or any third party. Seller also warrants that the furnishing of the services does not violate any patents, trademarks, copyrights, or intellectual property rights.

C. All warranties contained herein are in addition to any other express or implied warranties of Seller. Notwithstanding anything in Seller's documents (including quotes), these warranties shall control in the event of a conflict with any specification, warranty, or limitation on warranty set forth in Seller's documents. Seller's representations and warranties shall extend to Buyer and its successors and assigns, and Seller permits Buyer to assign its warranties to such parties. The representations and warranties set forth herein are cumulative and in addition to all other warranties provided by law or equity. These representations and warranties survive acceptance of the goods and/or services as well as payment by Buyer.

D. In the event of breach of the warranties set forth herein, or any other breach of the terms of this Purchase Order, Buyer, at its option, may require: (i) a credit or refund of the purchase price of the nonconforming goods and/or services, or (ii) replacement of the nonconforming goods and/or services at Seller's expense. Should Seller fail to provide the required remedy in a timely manner, Buyer may purchase replacement goods and/or services from a party other than Seller, at Seller's expense. Seller is responsible for all costs and damages incurred by Buyer in connection with any nonconformity or breach of warranty, including costs associated with the unpacking, sorting, examining, repacking and reshipping. Seller shall pay for all recall costs arising out of or in connection with any nonconforming goods. Further, in the event of a breach of warranty, Buyer may terminate this Purchase Order without liability.

4. **INDEMNIFICATION.** Seller shall indemnify, defend, and hold Buyer harmless from and against any and all claims, suits, actions, losses, liability, costs and expenses (including reasonable attorneys' fees), and damages ("Claims"), arising out of or related to any act, error, or omission of the Seller, its suppliers, subcontractors, representatives, agents or employees, in the performance of Seller's obligations hereunder, including but not limited to Claims resulting from: (i) personal injury (including death) or property damage; (ii) alleged infringement of patent or invention rights, copyrights, trademarks or other applicable intellectual property rights, arising out of the sale or use of goods or the provision of

services hereunder; and (iii) Seller's breach of its obligations under this Purchase Order (including violation of Section 18 regarding Buyer's confidential or proprietary information); provided, however, that the foregoing obligations shall not arise to the extent such Claims result from the sole negligence of Buyer, its employees, agents or representatives. If any good or service purchased hereunder is enjoined, Seller shall, at its sole cost and expense, either procure the right to continue the use of said service or good, or modify it in such a manner that it becomes non-infringing, or replace the infringing services or goods supplied with non-infringing services or goods acceptable to Buyer. The indemnification obligations herein shall survive termination of this Purchase Order, the delivery of any goods by Seller, and the completion of any services provided by Seller.

5. INDEPENDENT CONTRACTOR. Seller shall perform all services as an independent contractor and not as an employee and shall take all necessary precautions to prevent injury or death to persons or damage to property during such performance.

6. INSURANCE. Seller shall maintain insurance in, at a minimum and at its own expense, the following amounts and coverage descriptions: (a) Commercial General Liability in an amount of not less than US\$ 1,000,000 each occurrence and US\$ 2,000,000 in the aggregate for bodily injury and property damage, and US\$ 2,000,000 any one person or organization for personal and advertising injury for premises operation, products/completed operations, blanket contractual liability, and broad form property damage; (b) Workers' Compensation in full compliance with the laws of any applicable state and/or country, at not less than statutory limits; (c) Commercial Automobile Liability for owned, hired and non-owned motor vehicles in an amount not less than US\$ 1,000,000 combined single limit; (d) Employer's Liability and Occupational Disease in an amount of not less than US\$ 1,000,000 each accident for bodily injury and US\$ 1,000,000 each employee and in the aggregate for disease; and (e) Umbrella or Excess Liability, that follows form and is primary, in an amount not less than US\$ 5,000,000 Combined single limit any one occurrence and general aggregate. Except for Workers' Compensation, Seller shall include Buyer and its affiliates as an Additional Insured, for ongoing and completed operations, on all required insurance policies described above and the additional insured endorsement shall state that the coverage provided to the Additional Insureds is primary and non-contributing with respect to any other insurance or self-insurance available to the Additional Insureds. Seller hereby waives, and shall cause all consultants and lower tier contractors and all insurers, where allowed by law, to waive, any and every claim for recovery from Buyer and its affiliates (other than for Buyer's gross negligence) for any and all loss or damage covered by any of the insurance policies required to be maintained under this Purchase Order to the extent that such loss or damage is recovered under any such policy. Seller shall provide Buyer a certificate of insurance evidencing such coverage and requiring no less than 30 days' advance notice to Buyer before any cancellation of such coverage. Acceptance of insurance certificates by Buyer shall in no way limit Seller's duties and responsibilities under this Purchase Order, including the duty to indemnify Buyer. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Seller for liability in excess of such coverage, nor shall it preclude Buyer from taking other available actions under any other provision of this Purchase Order or law.

7. REJECTION. Payment for the goods and services delivered hereunder shall not constitute acceptance of the goods and services or a waiver of any rights or claims related to defective goods and services, nor shall tender of payment be a condition to Seller's duty to perform services required hereunder. Buyer may inspect the goods and services before or after payment (without regard to the manner of shipment or any shipping or price terms contained herein) and may reject any or all goods which are defective or nonconforming. Buyer may reject any or all services which do not, in Buyer's reasonable judgment, comply with this Purchase Order or the Specifications. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at Seller's expense and, in addition to Buyer's other rights, Buyer may charge Seller all reasonable expenses of unpacking, examining, repacking and reshipping such goods. For a period of 60 days after delivery to Buyer (such period being deemed reasonable by the parties), Buyer reserves the right to revoke its acceptance of all nonconforming goods, provided such nonconformity was not readily observable upon initial inspection.

8. INVOICES AND PAYMENT. Seller shall submit all requests for payment to Buyer on an appropriate invoice form, requesting payment in accordance with the payment schedule stated herein. Each invoice shall bear Buyer's Purchase Order number and coding, if any, shall be mailed not later than the day following shipment, and shall be accompanied by a bill of lading if shipment is made by a common carrier. Seller understands and agrees that an express condition precedent of Buyer's obligation to pay Seller on any invoice sent pursuant to this Purchase Order shall be Buyer's receipt of such invoice(s) in a timely manner. Further, Seller expressly waives its right to receive payment for any goods or services for which Buyer has not received an invoice that complies with this section within 30 days following the shipment of such goods or furnishing of such services, as applicable. All invoices for services performed on a time and material basis must include timesheets signed by an authorized Buyer representative for all services performed and materials utilized. All deliveries shall be made DDP Buyer's facility and Incoterms 2010 shall apply to all shipments, unless otherwise set forth on the face of this Purchase Order. Adequate data supporting the amount requested must be submitted by Seller when requested by Buyer. Payment by Buyer to Seller will be made only after receipt of a proper invoice from Seller within sixty (60) days following the date of Buyer's receipt of the invoice, except to the extent otherwise set forth on the face of Buyer's purchase order. All payment amounts referenced herein shall be in U.S. Dollars. To the fullest extent allowed by applicable law, Seller hereby waives all lien rights it may have against Buyer or Buyer's property, whether owned or leased by Buyer. As a condition precedent to any payment which is otherwise due to Seller under this Purchase Order, Seller shall execute and deliver a lien waiver in a form acceptable to Buyer.

9. PARTIAL SHIPMENTS. Shipments shall equal amounts ordered unless otherwise agreed in writing by Buyer. Partial shipments against this Purchase Order are not authorized except as may be specifically stated or indicated under the delivery date(s) specified on the Purchase Order's face, or unless authorization is obtained from in a writing signed by Buyer.

10. CHANGES. Buyer shall have the right, upon reasonable notice to Seller, to make changes with respect to goods in specifications, materials, packaging, time and place of delivery, and/or method of transportation prior to shipment. If any such changes cause an increase or decrease in the cost, Seller shall immediately notify Buyer in writing and an equitable adjustment may be made and this Purchase Order shall be modified in writing accordingly. Additionally, Buyer shall have the right at any time, by written instructions and/or drawings issued to Seller (each as "Change Order"), to order changes to the services. Seller shall, within ten (10) days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and the Purchase Order. Failure to respond in writing to a Change Order as provided herein shall be deemed an acceptance of the Change Order without modification to price or timeline. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment to Seller's compensation or the performance deadlines under this Purchase Order.

11. PRICES AND TRANSPORTATION. The price or prices for the goods and services set forth on the face hereof are firm, and unless otherwise provided on the face hereof Seller shall (a) be responsible for the prompt payment of all charges imposed or payable on any of the goods and services, including, without limitation, state and local taxes, customs duties, tariffs, royalties, and fees (including, without limitation, inspection, permit, and license fees); and (b) pay and bear the risk of any increase in the cost of freight or other shipping costs, freight, boxing, insurance or other charges imposed or payable on any of the goods. Seller shall suitably pack, mark and ship in accordance with instructions, if any, from Buyer.

12. RECOUPMENT AND SETOFF. All claims for money due or to become due from Buyer shall be subject to deduction, recoupment, or setoff by Buyer by reason of any claim arising out of this Purchase Order or any other transaction with Seller.

13. FORCE MAJEURE. Seller shall be excused from liability for failure to deliver goods or failure to perform services, and Buyer may cancel or delay this Purchase Order without liability or cancellation charges when such failure is due to acts of God, fire, war, civil commotion, act of civil or military authority, or other like causes beyond Buyer's and/or Seller's reasonable control, as applicable ("Force Majeure"). If Seller's failure to perform is caused by Force Majeure, Buyer shall be entitled to obtain goods or services covered by this Purchase Order elsewhere for the duration of such failure, and to reduce the quantity or amount of goods or services ordered from Seller by such amount without any obligation to Seller. If, at any time, Seller has reason to believe that deliveries will not be made or services will not be performed as scheduled, Seller shall give immediate written notice to Buyer, setting forth the cause of the delay.

14. COMPLIANCE WITH LAWS. Seller shall comply with all the applicable federal, state, and local laws and ordinances and all orders, rules and regulations issued thereunder, and any provisions, representations, or agreements applicable to the goods and/or services ordered hereunder (the "Applicable Laws").

15. DEFAULT; CUMULATIVE REMEDIES. If Seller (a) becomes insolvent, or declares itself or is declared to be insolvent, or admits in writing its inability to pay its debts generally; or (b) fails to comply with any site or safety requirements of Buyer, timesheet or invoicing processes of Buyer, or of the terms and conditions of the Purchase Order,

including these Conditions or of any other agreement with Buyer, Seller shall be in default hereunder. In the event of such default, Buyer shall be entitled to cancel any unfilled part hereof without any liability and shall have such other rights and remedies afforded to Buyer for breach of contract under the Uniform Commercial Code or under any applicable law. The rights and remedies provided Buyer in these Conditions shall be cumulative and in addition to any other rights and remedies provided at law or in equity.

16. **CANCELLATION.** Buyer reserves the right to terminate this Purchase Order in whole or in part upon ten (10) days prior written notice to Seller. If Seller is not in default of any of the terms herein, Buyer, as its sole obligation, may pay Seller a small restocking fee not to exceed ten percent (10%) of the price of the goods or services terminated but only if Buyer agrees to cover such fees in writing at the time of cancellation. With respect to services, upon receipt of such notice, Seller agrees to stop all work hereunder and to deliver no further services except as Buyer may otherwise direct in writing. In addition, Buyer reserves the right to cancel this Purchase Order, or any part thereof, if not completed within a reasonable time or within the time specified herein.

17. **SELLER'S REMEDIES AND LIMITATIONS THEREOF.** Seller shall mitigate its damages by using all reasonable efforts to sell any goods rejected by Buyer to an alternative purchaser, provided the goods are not exclusive to Buyer. Any action for Buyer's breach of this Purchase Order must be commenced by Seller within one year after the completion of services or delivery of goods hereunder, whichever occurs first.

18. **CONFIDENTIAL AND PROPRIETARY INFORMATION.** All knowledge or information which Seller obtains from or regarding Buyer, this transaction, Buyer's business, or any project(s) undertaken by Buyer shall be deemed confidential and proprietary information and shall not be disclosed without Buyer's express written permission, except as and to the extent required by law or for accounting or tax purposes, provided Seller promptly notifies Buyer so that Buyer is given a reasonable opportunity under the circumstances to seek a protective order or other remedy prior to Seller complying with such legal requirement. In the event of compelled disclosure, the Seller will take all reasonable steps to limit the access to and use and dissemination of Buyer's confidential information. All knowledge or information which Seller has disclosed or may hereafter disclose to Buyer shall not, unless otherwise specifically agreed to in writing by Buyer, be deemed to be confidential or proprietary information, irrespective of any indicia of confidentiality. Seller warrants and represents to Buyer that Seller shall not, without prior written consent of Buyer, communicate or disclose to any person or entity any information or opinions concerning the Purchase Order and the goods and services provided in connection therewith (collectively "Information"), in any form or medium, including but not limited to, letters, e-mails, blogs, Facebook, MySpace, Twitter, LinkedIn, or other social media forums or platforms, except: (i) Information in the public domain prior to the effective date of the Purchase Order; (ii) Information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of Seller; or (iii) as may be required by any Applicable Laws, but only to the extent necessary to comply with the Applicable Laws. Buyer reserves the right to require Seller to secure representations from employees of Seller and its Subcontractors containing the same representations and warranties. In addition to the foregoing representation and warranty, Seller shall remain fully bound by all provisions of any confidentiality or non-disclosure agreement(s) between the parties even after the termination, expiration or performance of this Purchase Order.

19. **DISPUTES.** If a dispute arises between Buyer and Seller hereunder, Seller shall continue to perform and to provide goods and services unless otherwise agreed in writing by Buyer and Seller. Except with respect to injunction or specific performance requests, any dispute arising out of or related to this Purchase Order that cannot be resolved by agreement of the parties shall be resolved by binding arbitration. The arbitrator shall be mutually selected and agreed upon by Buyer and Seller and the ensuing arbitration shall be held in metropolitan Chattanooga, Tennessee, in accordance with the Commercial Industry Rules of the American Arbitration Association (the "AAA Rules"). If Buyer and Seller are unable to agree upon an arbitrator, the arbitrator selection shall be in accordance and compliance with the AAA Commercial Rules. .

20. **NO WAIVER.** No agent, employee or representative of Buyer has any authority to amend, modify, supplement, add to, alter or waive any of these Conditions or terms of the Purchase Order other than in a writing signed by Buyer's authorized signatory. No waiver of any Purchase Order provision of or default hereunder shall affect Buyer's rights hereafter to enforce such provision or any other provision or to exercise any right or remedy in the event of any other default, whether or not similar.

21. **ENTIRE AGREEMENT.** This Purchase Order, and the documents referenced and incorporated herein, are the entire and integrated agreement between the parties concerning the subject matter hereof. No modification of any nature hereto shall be valid or binding upon the parties unless, and only to the extent that, it is set forth in writing and signed by both parties' authorized signatories. This Purchase Order is a final, complete and exclusive statement of the parties' agreement and supersedes all other agreements or communications, oral or written, between the parties hereto. Notwithstanding anything to the contrary herein, to the extent the authorized signatories of both parties have executed a separate agreement with respect to the furnishing of any goods or services contemplated herein with the express intent of making such agreement the governing document with respect to the purchase and sale of the goods and services, such agreement shall govern this transaction.

22. **GOVERNING LAW.** This Purchase Order is deemed to be performed in, and accordingly, shall be governed by and construed in accordance with the laws of the State of Tennessee, including but not limited to the laws applicable to the sale of goods under the Uniform Commercial Code, without regard to conflicts, or choice, of laws. Further, Seller agrees and understands that the United Nations Convention on the International Sale of Goods shall have no force, effect or application hereto, and Seller expressly waives any right to claim such application.

23. **ASSIGNMENT.** Neither party may assign its rights and obligations under this Purchase Order without the consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer shall have the right to assign its rights and obligations to an affiliate, parent, or subsidiary without the consent of Seller.

24. **SEVERABILITY.** Wherever possible, each Purchase Order provision shall be interpreted in such a manner as to be effective and valid under applicable law, but if any Purchase Order provision shall be prohibited by or invalid under applicable law, said provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining Purchase Order provisions.

25. **NOTICES.** All notices allowed or required hereunder shall be in writing and shall be deemed given if sent by personal delivery or by an overnight commercial delivery service that provides receipt to the address given for Buyer and Seller on the Purchase Order's face, or to such other address as either party may notify the other party in writing to use for future notices.

26. **SCHEDULE.** Time and quantities are of the essence with respect to Seller's obligations under this Purchase Order. Seller shall deliver all goods and services in strict accordance with the schedule established by Buyer or as agreed to in writing by Buyer, including all performance dates, timetables, project milestones and other requirements, except as may be provided in Section 13 herein. Seller shall be liable for all losses and damages resulting from Seller's failure to deliver goods and services in accordance with the terms and conditions of this Purchase Order, including but not limited to cover costs associated with the purchase of such goods or services by Buyer from a third party, as well as any additional direct, indirect, and incidental costs and expenses incurred by Buyer as a result of such failure.

27. **PROHIBITED PARTIES.** Neither Seller nor any person that directly or indirectly owns 10% or more of the outstanding equity in Seller (collectively, the "Seller Persons") is, or has been determined by the U.S. Secretary of the Treasury to be acting on behalf of, a Specifically Designated National and Blocked Person, or has otherwise been designated as (i) a person or entity with whom an entity organized under the laws of the United States is prohibited from entering into transactions or (ii) from whom such an entity is prohibited from receiving money or other property or interests in property, pursuant to Executive Orders, regulations promulgated by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), or otherwise. In addition, no Seller Person is located in, or operating from, a country subject to U.S. economic sanctions administered by OFAC. Should Seller be found in violation of any of the aforementioned obligations, Buyer may immediately terminate this Purchase Order and any obligation to purchase goods or services hereunder without liability, and Seller will indemnify Buyer for all costs and liabilities arising from such violation.