



PURCHASE ORDER STANDARD TERMS AND CONDITIONS
Updated March 2023

Precedence Among Purchase Order Documents: In the event of a conflict between or among the terms of the purchase order documents, the purchase order document with the highest relative precedence shall prevail. The order of precedence shall be in the following order: (a) Purchase Order Attachment A: Special Conditions, (b) Purchase Order Standard Terms and Conditions, (c) Purchase Order Agreement, (d) Purchase Order Attachment B: Administrative and Technical Provisions, (e) Purchase Order Attachment C: Services Performed On-Site, and (f) all other attachments by Crowder in ascending alphabetical order. **Attachments by Supplier are NOT enforceable under this Purchase Order.**

1. APPLICABILITY

The purchase order (the "Purchase Order") is an offer by Crowder Constructors Inc., Crowder Construction Company or Crowder Industrial Construction LLC ("Crowder") for the purchase of goods and/or services from the supplier set forth on the face of the Purchase Order ("Supplier") in accordance with and subject to these terms and conditions (the "Terms").

2. TIME

It is expressly agreed that time is of the essence and Supplier agrees to deliver the goods, materials, equipment (collectively "Goods"), or services ("Services" and together with the Goods, the, "Deliverables") within the time and in the manner specified in the Purchase Order (or within the time of any extension as may be granted by Crowder), and Supplier shall be liable for any and all damages suffered by Crowder due to failure of Supplier to timely deliver the Deliverables.

3. PAYMENT

Crowder will pay undisputed amounts net forty (40) days after the later of Crowder's: (1) receipt of a fully executed Purchase Order, (2) receipt of a valid invoice from Supplier which conforms to the Purchase Order and these Terms, or (3) Crowder's acceptance of the Deliverables. Supplier will not invoice Crowder until the Goods have been delivered or Services rendered. The prices for Deliverables on the front of this Purchase Order are complete and include, but are not limited to, the purchase price, taxes, delivery, packaging, storage and insurance. No increase in price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Crowder.

4. DELIVERY & ACCEPTANCE OF GOODS

All shipping, completion and delivery dates are firm. If Supplier fails to deliver the Goods in full on the date of delivery, Crowder may terminate the Purchase Order immediately by providing written notice to Supplier and Supplier shall indemnify Crowder against any losses, damages and reasonable costs and expenses directly attributable to Supplier's failure to deliver the Goods on the stated delivery date. Shipment of Goods will be FOB Crowder's jobsite unless otherwise specified in writing by Crowder. Supplier shall retain title and risk of loss of all Goods until delivered to Crowder's jobsite (or other location specified in the Purchase Order). Supplier must suitably pack or otherwise prepare for shipment all Goods to prevent damage in transit. Supplier will ensure that all packaging and labeling comply with the laws of the destination jurisdiction. Supplier must comply with all carrier requirements. Goods must be classified to secure the lowest possible shipment, insurance and duty rates. Crowder may test or inspect all Deliverables delivered, but Crowder's inspection, testing or payment (or lack of inspection, testing or payment) is not an acceptance of any Deliverables or a waiver of any right or warranty and does not preclude Crowder from rejecting defective Deliverables.

5. ITEM APPROVAL

The Purchase Order is contingent upon approval of items by the owner of the project specified in the Purchase Order ("Owner") and/or the engineer on the project (the "Engineer"). The disapproval of items submitted shall be cause, only at the option of Crowder, for cancellation of the Purchase Order in its entirety without prejudice, penalty or cancellation charges by Supplier. At its option, Crowder may reject any portion of the Goods at a reasonably reduced price or reject the Goods and require replacement of the rejected Goods. If Crowder requires replacement of the Goods, Supplier shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement goods. If Supplier fails to timely deliver replacement goods (or substitute Goods as set forth in Section 6 – EQUAL SUBSTITUTIONS below) Crowder may replace them with goods from a third party and charge Supplier the cost thereof and terminate this Purchase Order.

6. EQUAL SUBSTITUTIONS

Supplier shall be responsible for furnishing sufficient information to allow the Engineer to determine that the item proposed is equivalent or equal to that specified. Supplier shall certify that evaluation of the proposed substitute shall not prejudice achievement of completion dates or cause delay in Crowder's construction schedule. Any additional cost associated with a substitution (e.g., surety, Engineer's review fees, modifications, etc.) shall be borne by Supplier. Changes to the scope of work in the order are valid only after a written change order has been executed by Crowder and Supplier.

7. WARRANTIES

(A) Supplier warrants and covenants that: (1) all Deliverables do and will conform with this Purchase Order and all project specifications, designs, and drawings applicable to the Deliverables; (2) all Goods are and will be free from defects in materials, workmanship and design for a minimum of one year or longer if required by the project specifications; (3) all Goods are and will be free from liens, restrictions, reservations, security interests or encumbrances; (4) all Deliverables are and will be suitable for, and perform in accordance with, the particular purposes for which they were purchased by Crowder and for which they were designed, manufactured, constructed, or provided; (5) all Goods will be merchantable; and (6) all Services will be provided by individuals who have the expertise, skills, training and professional education to perform the services in a professional manner.

(B) Supplier warrants that neither the Deliverables, nor Crowder's or Owner's use of the Deliverables, will infringe any patent, copyright, trademark, service mark, intellectual property right or the misappropriation of any trade secret or the violation of a right of publicity or a nondisclosure obligation. Supplier agrees that it shall pass through to Crowder, and provide Crowder with the benefit of, any product warranty applicable to the Goods made by the third party original equipment manufacturer of the Goods, but only to the extent Supplier is authorized by such third party to pass through such warranties.

(C) Supplier warrants the Deliverables covered in this Purchase Order to Crowder on the same terms and for the same period as Crowder warrants the Deliverables to the Owner under the terms of the contract documents with Owner (the "Contract Documents").

(D) Supplier warrants to Crowder that any Services provided under this Purchase Order shall be performed using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar Services and shall devote adequate resources to meet its obligations under the Purchase Order.

NOTE: ALL REVISIONS TO THESE TERMS AND CONDITIONS AS WELL AS ANY LANGUAGE PERTAINING TO INDEMNIFICATION OR LIMITATION OF LIABILITY MUST BE LISTED ON ATTACHMENT A AND APPROVED BY THE CEO OR COO OF CROWDER CONSTRUCTORS INC.

8. INDEMNIFICATION

To the greatest extent of the law, Supplier agrees to protect, indemnify, defend, and hold harmless Crowder, Owner, and their respective agents, servants, officers, directors, and employees (each an "Indemnified Party") from and against any and all costs (including but not limited to reasonable attorneys' fees), losses, liabilities and claims, or causes of action due to: (a) Supplier's breach of the Purchase Order or these Terms, (b) injury (including death) to persons, including but not limited to employees of Crowder, Owner and/or Supplier, (c) damages to property, including but not limited to property of Crowder or Owner, and (d) any claim that any Goods are subject to any third party lien, security interest, or encumbrance. Supplier's indemnification obligation is limited to costs, losses, liabilities, claims, and causes of action arising directly or indirectly out of Supplier's negligent or willful acts or omissions. Furthermore, Supplier shall, at its expense, defend, indemnify and hold harmless any Indemnified Party against any and all costs (including but not limited to reasonable attorneys' fees), losses, liabilities and claims, or causes of action due to any claim that Crowder's or any Indemnified Party's use or possession of the Goods or performance of Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party.

9. LIMITATION of LIABILITY

Except as otherwise provided herein, neither Crowder nor Supplier shall be liable for any indirect, consequential, special, exemplary or punitive damages hereunder, including without limitation loss of profits, loss of goodwill, and loss of business opportunity. This limitation does not apply to claims, costs, losses or damages directly relating to: (i) death or personal injury; (ii) damage to or destruction of a third party's property; (iii) infringement of a third party's intellectual property rights; or (iv) Supplier's gross negligence of willful misconduct; or (v) losses covered by insurance.

10. TERMINATION

Crowder may at any time terminate for convenience further performance of all or part of this Purchase Order by giving written notice to Supplier. If Supplier, for any reason, fails to ship or deliver Goods or perform Services within the times specified in this Purchase Order, Crowder may, without liability (except for goods or services previously delivered and accepted), terminate this Purchase Order in whole or in part, by written notice to Supplier, and Supplier will be liable to Crowder for damages that Crowder incurs due to non-performance, including the excess cost for substitute goods or services. In the case of termination for convenience, Supplier will be paid for Goods delivered and accepted by Crowder and Services properly rendered through date of termination.

11. FORCE MAJEURE

Neither Crowder nor Supplier will be responsible for any delay or failure to perform if the delay or failure results from any of the following causes or causes of a similar nature: fires, floods, severe weather or other acts of God, epidemic, pandemic, embargoes, government controls or other forms of intervention, war, acts of terrorism or any change of law. In such case, the remedy for such delay or failure shall be an extension of time. In the event that the impacted party's failure or delay remains uncured for a period of sixty (60) consecutive days following written notice, the other party may thereafter terminate the Purchase Order by providing written notice.

12. COMPLIANCE WITH LAWS

Supplier shall comply with all applicable federal, state and local laws and any rules, regulations and orders issued under such laws, including but not limited to, labor and employment laws, anti-kickback acts, worker's compensation requirements, and hazardous communication laws.

13. SERVICES PERFORMED ON-SITE

All Services performed on the jobsite are subject to these Terms as well as *Attachment C: Services Performed On-Site*. In the event of a conflict between these Terms and *Attachment C: Services Performed On-Site*, these Terms shall control.

14. ORDER AGREEMENT CLAUSE

The Purchase Order takes precedence and is considered all inclusive such that any correspondence, including but not limited to, bid proposals, letters, e-mails, facsimiles, addendums attached by the Supplier, dated prior to or after the execution of the agreement, do not modify the agreement in any way unless they specifically reference the Purchase Order and these Terms and indicate that such subsequent agreement intends to modify and amend the Purchase Order and/or these Terms. The Purchase Order and these Terms reflect the entire agreement and understanding of Crowder and Supplier with respect to the subject matter hereof. The Purchase Order agreement shall only be considered modified by a change order written by Crowder and executed by all parties. No implied modifications and/or implied waivers shall otherwise apply.

15. GOVERNING LAW

All matters arising out of or relating to these Terms or the Purchase Order shall be governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provisions.

16. ARBITRATION

Any claim, controversy, or dispute between Crowder and Supplier relating to this Purchase Order or the Services hereunder will be resolved by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. The sole and exclusive venue for such arbitration shall be Charlotte, North Carolina, unless another location is mutually agreed upon. Supplier hereby agrees to participate in and be bound by the dispute resolution terms of the Contract Documents, and Supplier further agrees that it may be joined as an additional party to an arbitration involving other parties under the Contract Documents and consents to consolidation of substantially related arbitrations.

17. CUMULATIVE REMEDIES

The rights and remedies under this Purchase Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

18. ASSIGNMENT

Supplier shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Crowder. Any purported assignment or delegation in violation of this Section 18 shall be null and void. No assignment or delegation shall relieve the Supplier of any of its obligations hereunder.

19. NOTICES

All notices, requests, consents, claims, demands, waivers and other communications shall be in writing and addressed to the parties at the addresses set forth within Purchase Order or to such other address that may be designed in writing by either party. All notices shall be delivered by personal delivery, nationally recognized overnight courier, by email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested).

NOTE: ALL REVISIONS TO THESE TERMS AND CONDITIONS AS WELL AS ANY LANGUAGE PERTAINING TO INDEMNIFICATION OR LIMITATION OF LIABILITY MUST BE LISTED ON ATTACHMENT A AND APPROVED BY THE CEO OR COO OF CROWDER CONSTRUCTORS INC.