

PURCHASE ORDER STANDARD TERMS AND CONDITIONS

Version 07.2012

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 the Supplier are NOT enforceable under this Purchase Order.**

- I. **TIME:** It is expressly agreed that time is of the essence and the Supplier agrees to deliver the material within the time and in the manner specified or within the time of such extensions as may be granted and Supplier shall be liable for any damages suffered by Crowder due to failure of Supplier to deliver the work within the time specified herein, including but not restricted to that portion of liquidated and/or special damages asserted against Crowder by the Owner for such delay period as Crowder finds is attributable to the Supplier's late performance.
- II. **PAYMENT:** Crowder Construction Company (Crowder) will pay undisputed amounts net 40 days, unless otherwise stated in the Purchase Order Attachment A: Special Terms and Conditions or Purchase Order Attachment B: Administrative and Technical Provisions, after the later of (1) Crowder's receipt of a fully executed purchase order, (2) receipt of a valid invoice, or (3) Crowder's acceptance of the goods or services. The Supplier will not invoice Crowder until the goods have been delivered or services rendered. The prices for the goods and services 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.
- III. **DELIVERY & ACCEPTANCE:** All shipping, completion and delivery dates are firm. Shipment of goods will be FOB jobsite unless otherwise specified. The Supplier must suitably pack or otherwise prepare for shipment all goods to prevent damage in transit. The Supplier will ensure that all packaging and labeling complies with the laws of the destination jurisdiction. The 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 goods or services delivered, but Crowder's inspection, testing or payment (or lack of inspection, testing or payment) is not an acceptance of goods or services or a waiver of any right or warranty and does not preclude Crowder from rejecting defective goods or services.
- IV. **ITEM APPROVAL:** The order is contingent upon approval of items by the Owner and/or Engineer. The disapproval of items submitted shall be cause only at the option of Crowder for cancellation of the order in its entirety without prejudice, penalty or cancellation charges by the Supplier.
- V. **EQUAL SUBSTITUTIONS:** The 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. The 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 (i.e., surety, Engineer's review fees, modifications, etc.) shall be borne by the Supplier. Changes to the scope of work in the order are valid only after a written change order has been executed.
- VI. **WARRANTIES:** A) The Supplier warrants and covenants that all goods and services delivered: (1) do and will conform with this Purchase Order and all project specifications; (2) 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) are and will be free from liens, restrictions, reservations, security interests or encumbrances; (4) 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 or constructed; (5) with respect to services only, will be provided by individuals who have the expertise, skills, training and professional education to perform the services in a professional manner.
B) The Supplier will, at Crowder's request and without additional expense to Crowder, promptly correct defects or replace non-conforming goods or services, in Crowder's sole discretion. If the Supplier does not promptly correct defects or replace non-conforming goods or services when so requested, Crowder, after written notice to the Supplier, may make corrections or replace goods and services and charge the Supplier for the cost incurred.
C) The Supplier warrants that neither the goods nor services, nor Crowder's use of the goods or services, will constitute an infringement of 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.
D) The Supplier warrants goods and services covered in this Purchase Order to Crowder on the same terms and for the same period as Crowder warrants the work to the Owner under the Contract Documents; and, with respect to the goods and services, the Supplier shall provide, as required, all warranty and performance bonds obligations and responsibilities assumed by the Purchaser under the Contract Documents.
- VII. **INDEMNIFICATION:** To the greatest extent of the law, the Supplier agrees to protect, indemnify, defend, and hold harmless Crowder, the Owner and/or Principal, and their respective agents, servants, officers, directors, and employees from and against any and all costs (including but not limited to attorneys' fees), losses, liabilities and claims (including claims contractually assumed by Crowder), or causes of action due to (a) the Supplier's failure to comply with the provisions of this purchase order or (b) injury (including death) to persons, including but not limited to employees of Crowder, the Owner and/or Principal or the Supplier or (c) damages to property, including but not limited to property of Crowder or Owner and/or Principal, arising directly or indirectly out of or in any way connected with the goods and services provided for in this purchase order.
- VIII. **CANCELLATION:** Crowder reserves the rights to cancel this order in whole or in part if delivery is not made in accordance with all the terms of this order.
- IX. **TERMINATION:** Crowder may at any time terminate for convenience further performance of all or part of this Purchase Order by giving written notice to the Supplier. If the 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 the Supplier, and the Supplier will be liable to Crowder for damages that Crowder incurs due to non-performance, including the excess cost for substitute goods or services.
- X. **COMPLIANCE WITH LAWS:** The 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.
- XI. **SERVICES PERFORMED ON-SITE:** All services performed on the jobsite are subject to the purchase order standard terms and conditions as well as Purchase Order Attachment C: Services Performed On-Site.
- XII. **ORDER AGREEMENT CLAUSE:** The purchase order agreement 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. This purchase order agreement shall only be considered modified by a change order written by Crowder Construction Company and executed by all parties. No implied modifications and/or implied waivers shall otherwise apply.
- XIII. **ARBITRATION:** Any claim or controversy relating to this Purchase Order or the services provided hereunder will be resolved by binding arbitration in Charlotte, Mecklenburg County, North Carolina.

NOTE: revisions pertaining to indemnification or limitation of liability must be authorized by the CEO, COO or CFO of Crowder Constructors Inc.

Supplier Initials: _____

Purchaser Initials: _____