

**NOOTER CONSTRUCTION COMPANY
PURCHASE ORDER--GENERAL TERMS AND CONDITIONS**

THE FOLLOWING GENERAL TERMS AND CONDITIONS (“TERMS AND CONDITIONS”) GOVERN THE PURCHASE BY NOOTER CONSTRUCTION COMPANY (“NCC”) OF ALL GOODS, EQUIPMENT AND MATERIALS (“GOODS”) AND/OR ANY SERVICES (“WORK”) FROM ANY SELLER (“SELLER”) MADE PURSUANT TO NCC’S PURCHASE ORDER TO SELLER, INCLUDING ANY WRITTEN AGREEMENT BETWEEN NCC AND SELLER, OR PURSUANT TO ANY OTHER ORDER OR PROPOSAL BY NCC DELIVERED TO SELLER OR ANY OF SELLER’S REPRESENTATIVES (COLLECTIVELY, THE “PURCHASE ORDER”).

THE PRICE OFFERED BY NCC AND SET FORTH IN THE PURCHASE ORDER (THE “PURCHASE PRICE”) IS BASED ON SELLER’S ACCEPTANCE OF THESE TERMS AND CONDITIONS, AND ACCORDINGLY, ACCEPTANCE OF NCC’S PURCHASE ORDER IS EXPRESSLY CONDITIONED UPON ACCEPTANCE OF SUCH TERMS AND CONDITIONS. ALL SUCH TERMS AND CONDITIONS SHALL CONSTITUTE THE SOLE AND EXCLUSIVE AGREEMENT BETWEEN NCC AND SELLER, AND THE SAME MAY NOT BE ALTERED, AMENDED, MODIFIED OR RESCINDED EXCEPT IN WRITING SIGNED BY NCC AND SELLER. ANY TERMS AND CONDITIONS CONTAINED IN ANY FORMS OR DOCUMENTS HERETOFORE OR HEREAFTER SUPPLIED BY SELLER TO NCC WHICH ARE IN ADDITION TO OR DIFFERENT FROM THE TERMS AND CONDITIONS HEREIN CONTAINED SHALL NOT BE A PART OF THE CONTRACT BETWEEN NCC AND SELLER, NOR SHALL NCC’S RECEIPT OF THE GOODS OR WORK DESCRIBED ON THE FACE HEREOF OR IN THE PURCHASE ORDER BE CONSTRUED AS AN ACCEPTANCE OF ANY TERMS AND CONDITIONS CONTAINED IN ANY SUCH FORMS OR DOCUMENTS SUPPLIED BY SELLER.

1. **Warranty.** Seller warrants that any Goods furnished hereunder will be free from defects, that any Work will be done in a workmanlike manner, and that design, if provided by Seller, will be capable of performing as proposed. If any failure to conform to this warranty be found within twenty-four (24) months from the date the Goods and/or Work is accepted by NCC’s customer identified in the Purchase Order (“Customer”), Seller will correct such nonconformity by correcting any deficiency in design, replacement of defective material and parts or by making other suitable repairs.

2. **Control.** Seller, as an independent contractor, shall be in sole charge and exclusive control of all Work, and shall furnish all material, equipment, labor and supervision necessary for the complete and satisfactory performance of the Work. Notwithstanding the foregoing, Seller may employ only such subcontractors as shall be approved by NCC and Customer. Seller agrees to a clause substantially similar to the above clause to be included in all of Seller’s subcontracts and will require all subcontractors to adhere to the above provisions.

3. **Safety.** Seller shall comply with and enforce its own safety rules and shall be solely responsible for the safety of its employees. Seller will also comply with and enforce all applicable safety rules of NCC and the Customer. Finally, Seller will observe, comply with and enforce compliance with applicable laws, regulations and rules promulgated by any federal, state or local governmental body or agency on the subject of safety. Seller will also require its subcontractors to likewise comply with and enforce all said safety rules or requirements.

4. **Permits; Compliance with Laws.** Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by Seller. Seller shall give all notices and comply with laws, ordinances, rules and regulations bearing on the conduct of the Work, including all applicable state and federal wage and hour laws. If Seller observes that the drawings and the specifications are at variance therewith, it shall promptly notify NCC in writing, and the necessary changes shall be made.

5. **Time of Completion.** Time being of the essence hereunder, Seller shall deliver any Goods and begin, prosecute, and complete any Work at the times required by NCC to enable NCC to begin, prosecute and complete in a timely manner its work under NCC’s contract with the Customer (the “Principal Contract”). Seller shall prepare and submit to NCC for approval a schedule for completion of all Work within the period specified in the Purchase Order, showing the order in which

Seller proposes to execute the Work, and the respective dates on which the essential parts of the Work will be begun and completed.

6. **Materials.** All Goods to be installed as a permanent part of the Work shall be new and in accordance with any specifications set forth in the Purchase Order.

7. **Changes.** NCC may from time to time submit change orders or additional Purchase Orders to Seller. Extra charges may be imposed by Seller for its costs in making changes to NCC’s order, provided such charges are approved in advance, in writing, by NCC. These Terms and Conditions govern any changes to existing agreements or additional Goods provided or work performed by Seller.

8. **Inspection.** NCC and the Customer and their representatives shall at all times have access to the Work wherever it is in preparation or progress. All Goods furnished and workmanship performed by Seller shall be subject to final inspection, tests, and acceptance by NCC and the Customer upon completion of all Work, and whether or not previously inspected or paid for by NCC. If the specifications or NCC’s instructions require any Work to be specially tested or approved, Seller shall give NCC timely written notice of its readiness for such inspection and testing, and of the date fixed for such inspection or testing.

9. **Correction of Work.** Seller, at its own expense, shall promptly remove from the Work site all materials and equipment condemned by NCC as failing to conform to the Purchase Order, whether incorporated in the Work or not, and shall promptly replace such materials and equipment and re-execute its Work to conform to the Purchase Order. If Seller does not promptly, upon receipt of notice of such deficiencies undertake and proceed diligently to remedy the same, NCC may remove Seller from all or any part of the Work, taking possession of all materials, equipment and tools in connection therewith. NCC may then remedy such deficiencies, by whatever method it may deem expedient, and, at its option, may then complete all or any part of the Work for Seller’s account.

10. **Payment.** Except as otherwise provided in the Purchase Order, and notwithstanding the terms of Seller’s invoices, amounts invoiced to NCC by Seller are payable within 45 days of the invoice date.

11. **Setoff.** NCC may set off against any amount otherwise due to Seller under the Purchase Order any amount or amounts due to NCC from Seller from any source, including any obligation of Seller to NCC under the Purchase Order or these Terms and Conditions.

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12. **Audit.** Where Seller performs any Work on a unit price, cost-plus or time and material basis, NCC shall have access, at all reasonable times, to all Seller's books, records, correspondence, instructions, plans, drawings, receipts, vouchers, financial accounts and memoranda of every description pertaining to such Work for the purpose of auditing and verifying costs of services or for any other reasonable purpose upon prior notice to Seller. Seller is required to maintain supporting data and accounting records in accordance with generally accepted accounting principles. NCC shall have the right to reproduce any of the aforesaid documents. In the event lump sum elements are included under Purchase Order along with any cost-plus or time and material items, then audit rights shall also extend to include all Seller's and its subcontractors' records pertaining to lump sum for assurance that the portions of the Work performed on a unit price, cost-plus or time and material basis are not being charged with costs which are by their nature intended to be covered by lump sums. Seller shall preserve and shall cause its subcontractors to preserve all the appropriate above-mentioned documents for periods of three years after the completion and acceptance or termination of Work. Seller agrees to include the necessary provisions in its contracts with such subcontractors that will assure access by NCC to applicable records of such subcontractors. Seller will not charge for its costs incurred in complying with any such audit. Seller's obligations under this paragraph shall survive any termination of the Purchase Order.

13. **Indemnification.** TO THE FULLEST EXTENT ALLOWED BY LAW, SELLER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS NCC AND THE CUSTOMER, AND ITS AND THEIR AFFILIATES AND SUBSIDIARIES AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "SELLER INDEMNITEES") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES (WHETHER INCURRED AS THE RESULT OF A THIRD PARTY CLAIM OR A CLAIM TO ENFORCE THE PURCHASE ORDER), WHICH MAY HEREAFTER BE ASSERTED AGAINST OR SUFFERED BY ANY OR ALL OF THE SELLER INDEMNITEES FOR PERSONAL INJURY, PROPERTY DAMAGE OR ANY ACTUAL, ALLEGED OR CONTRIBUTORY PATENT OR COPYRIGHT INFRINGEMENT, MISAPPROPRIATION OF CONFIDENTIAL INFORMATION, OR VIOLATION OF OTHER INTELLECTUAL OR PROPRIETARY RIGHTS OR LICENSES, ARISING, DIRECTLY OR INDIRECTLY, OUT OF THE GOODS SUPPLIED OR WORK PERFORMED BY SELLER, UNDER THE PURCHASE ORDER EXCEPT TO THE EXTENT SUCH ACT, OMISSION OR INFRINGEMENT IS AT THE DIRECTION OF NCC. IN ANY AND ALL CLAIMS AGAINST ANY OF THE SELLER INDEMNITEES, THIS INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPES OF DAMAGES, COMPENSATION OR BENEFITS, PAYABLE BY OR FOR NCC UNDER WORKERS' COMPENSATION ACTS, DISABILITY

BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS OR BY THE PROVISION OF ANY INSURANCE.

14. **Insurance.** Seller shall maintain automobile liability insurance and commercial general liability insurance coverage, providing for a combined single limit of not less than \$1,000,000 per accident and maintain commercial general liability insurance on a coverage form at least equal to that provided under ISO CG 00 01, latest available edition, on an occurrence basis, without restricting endorsements that reduce coverage, providing for a single limit of not less than \$1,000,000 per occurrence and in the aggregate (underwritten by an insurance company with at least an "A7" Best rating as defined by A. M. Best). Seller shall name NCC and the Customer and their respective employees, officers, directors, agents, successors and assigns as additional insureds with coverage at least as broad as that provided by ISO form CG 20 1011 85, which includes the additional insureds in coverage for completed operations. Any deductible of self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of SUBCONTRACTOR. Such insurance shall be primary with respect to any other insurance available to additional insureds. Seller shall maintain workers' compensation and employers' liability insurance providing statutory workers compensation benefits and \$1,000,000 employers liability insurance (including umbrella coverage) covering Sellers' employees. Seller shall furnish NCC with evidence of insurance certifying in clear and sufficient detail that the insurance required under this paragraph has been provided. Such evidence shall be furnished at NCC's request. The certificate for the commercial general liability insurance shall verify that in the event of cancellation, termination or non-renewal, the insurer shall provide NCC thirty (30) days' prior written notice of such cancellation, termination or non-renewal by registered mail or certified mail return receipt requested. Seller's obligations under the Purchase Order shall not be limited or diminished in any way by the provisions of any insurance coverage required to be carried by Seller under this paragraph.

15. **Waiver of Subrogation.** Each party waives the right to recovery to the extent that any of its policies of insurance covers the loss, provided that such policy(ies) of insurance permit it to waive the right of subrogation. If this provision would have the effect of invalidating any insurance coverage of the parties, then this provision of mutual waiver of subrogation shall be null and void as to such policy(ies).

16. **Other Terms.** Unless otherwise agreed, Work is to be performed during the Customer's working hours scheduled for the Work.

17. **Choice of Law.** Dealings between Seller and NCC shall be construed, governed and enforced in accordance with the laws of the State of Missouri applicable to contracts made and to be performed wholly within Missouri, without regard to any conflict of laws.

18. **Non-Waiver.** Waiver by either party of a breach of any provision hereof shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect.

THE FOREGOING GENERAL TERMS AND CONDITIONS OF SALE ARE INCORPORATED BY REFERENCE INTO EACH PURCHASE ORDER FROM NCC. BY ACCEPTING AN ORDER, SELLER INDICATES THAT IT HAS READ AND ACCEPTED THESE GENERAL TERMS AND CONDITIONS OF PURCHASE.

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