

## PURCHASE ORDER TERMS AND CONDITIONS

1. **Acceptance**

Upon acceptance by Supplier by execution of the acceptance copy hereof or by beginning performance or supplying the materials or equipment provided for herein, this Purchase Order shall supersede all other written or oral agreements and shall constitute a valid and binding contract. No additions or alterations made to this Purchase Order by Supplier shall become part of this Purchase Order without the written consent of the Purchaser. Any additional or different terms or conditions stated by the Supplier in accepting or acknowledging this Purchase Order are rejected in advance unless explicitly accepted in writing by Purchaser. PURCHASER'S OFFER IS EXPRESSLY CONDITIONED UPON SUPPLIER'S ACCEPTANCE OF ALL THESE PURCHASE ORDER CONDITIONS.

2. **Contract Documents**

The Contract Documents forming a part of this Purchase Order on this Project include the general and special conditions, plans, specifications, drawings, addenda, the agreement between the Purchaser and the Prime Contractor or Owner, other data furnished to Supplier or referred to on this Purchase Order. Complete copies of the Contract Documents are on file and available for review by Supplier by appointment upon request.

3. **Compliance with Contract Documents**

All material, equipment and other items furnished hereunder shall be in strict compliance with all applicable provisions of the Contract Documents, and Supplier shall be bound thereby in performance of this Purchase Order. Supplier shall comply with and furnish required certificates and qualification data.

Equipment furnished under this Purchase Order must fit within the available space as shown on the Contract Documents. All work, material or equipment furnished under this Purchase Order will be merchantable, new and not reused or refurbished, clean, of good material and workmanship, and free of patent or latent defects and fit and be sufficient for the purposes for which it is ordered by Purchaser.

4. **Payment**

Supplier shall be paid net thirty (30) days after receipt of payment by Purchaser in accordance with progress payment terms of Contract Documents unless noted otherwise in this Purchase Order.

5. **Taxes**

Except as may be otherwise provided in this Purchase Order, the Purchase Order price includes all applicable federal, state and local taxes applicable to the delivered product at job site.

6. **Correspondence**

a. ACCEPTANCE OF THIS PURCHASE ORDER SHALL BE SENT TO:

[      Ferry Electric Company      ]  
250 Curry Hollow Rd  
Pittsburgh, PA 15236  
Fax: 412-892-2107  
[      **Email: [klpaterra@ferryelectric.com](mailto:klpaterra@ferryelectric.com)**      ]

b. Invoices, correspondence, shop drawings and catalog cuts shall be sent to:

[      Ferry Electric Company      ]  
250 Curry Hollow Rd  
Pittsburgh, PA 15236  
Fax: 412-892-2107  
[      **Email: [klpaterra@ferryelectric.com](mailto:klpaterra@ferryelectric.com)**      ]

- c. All packing slips, invoices and correspondence shall be clearly marked with: Job Name, Job Number and Purchase Order Number.
- d. FAILURE TO FOLLOW THE INSTRUCTIONS HEREIN COULD DELAY PAYMENT.

## 7. **Delivery, Packaging, Markings and Packing Lists**

- a. Delivery of each shipment shall be made as set forth in the Contract Documents or as directed by the Purchaser, in strict accordance with any schedule or other conditions set forth in this Purchase Order. Delivery of specified materials at the scheduled **time is of the essence** of this Purchase Order.
- b. If, for any unforeseeable reason at the time of the signing of this Purchase Order, it is later learned by the Supplier that the production lead time, as indicated on this Purchase Order, has increased, Supplier must notify Purchaser in writing in sufficient time that they may update their release of subject material or equipment so as not to impair their ability to meet the construction schedule.

Failure to make timely delivery and/or to comply with the notice requirement may result in unnecessary additional job costs and/or damages for which Supplier shall be liable.

- c. Supplier will furnish equipment properly conditioned for Project storage prior to and after installation in accordance with the Contract Documents and shall notify Purchaser in writing of any special servicing required during storage to assure that equipment will be functional at time of start-up and operation.
- d. Each shipping package, crate, skid or container shall be plainly addressed as shown in the "Ship To" block of this Purchase Order, marked with the Purchase Order Number and any special markings as required by this Purchase Order, and have two copies of the packing list in a package, crate, skid or container.
- e. ALL BILLS OF LADING SHALL BE MARKED, "NOTIFY CONSIGNEE FORTY-EIGHT (48) HOURS PRIOR TO DELIVERY BY TELEPHONE AT [ **Mike Snatchko (cell) 412-874-3679** ]."
- f. Freight is to be F.O.B. destination, prepaid by Supplier to destination and with full freight allowed unless noted otherwise in the Purchase Order. No shipment is authorized until formally released by an authorized representative of Purchaser.
- g. ANY ITEMS WHOSE SIZE OR WEIGHT IS SUCH TO REQUIRE MECHANICAL HANDLING SHALL BE DELIVERED IN OPEN TOP MOTOR FREIGHT.
- h. Supplier shall insure and be responsible for the items provided hereunder until such time as they have been delivered and unloaded at their destination and accepted by Purchaser.
- i. Delivery shall not be deemed to be complete until the materials or equipment have been actually received and accepted by Purchaser, notwithstanding any agreement on the part of Purchaser to pay freight, express or other transportation charges; and the risk of loss or damage in transit and until delivery is complete shall be upon Supplier. Supplier shall maintain insurance covering all damages to or loss of the materials or equipment incurred during shipment, and such insurance shall be for the benefit of Purchaser and Supplier, as their respective interests may appear.
- j. Supplier warrants that it is the sole owner of the mat; that there are no other interests – security or other claims thereon; and that the materials are free and clear of all claims, interests, liens and encumbrances. Title passes to Purchaser, or if the Contract Documents so provide, the prime contractor or owner upon the earliest of (a) delivery, (b) payment, or (c) the time set forth in the Contract Documents.
- k. Supplier shall provide appropriate facilities at all reasonable times for inspection by Purchaser, prime contractor or owner of the work, materials and equipment provided under this Purchase Order, whether at the project site or at any place where such work, materials or equipment may be in preparation, manufacture, storage or installation.

## 8. **On-Site Work**

- a. If Supplier's workers will be at the jobsite at any time, Supplier agrees to adhere to the requirements of Purchaser's safety policy, prime contractors safety policy and owner's work rules and to provide a Certificate of Insurance meeting our and/or the project required Insurance Limits and with adequate proof of Workers' Compensation Insurance and naming Ferry Electric Company as an additional insured.

9. **Shop Drawings and Catalogs (Submittals)**

- a. Supplier shall furnish all compliance submittals in accordance with the Contract Documents in quantities required by the Purchaser. **Timely and accurate submittals of shop drawings and catalogs are of the essence of this Purchase Order.**
- b. All drawings, catalog cuts, operating manuals or instruction books shall be clearly marked, showing what is being submitted, including the Project's Name and Address, the Architect/Engineer's Name and Address, the Purchaser's Name, Address and Purchase Order Number, the Manufacturer's Name and Address, the Equipment Reference Number, Location, and Contract Drawing and Specification References.
- c. All deviations are to be clearly referenced by the Supplier on the submittal. All deviations must be approved by the Owner or by the Owner's representative. Submittals shall include dimensions, shipping and installation weights, performance data and curves, and all other data required to evaluate the manufacturer's submittal.
- d. Submittal drawings are to be properly oriented with all pertinent information fully and accurately noted.

10. **Guarantees**

- a. It is mutually agreed that the Supplier will provide any and all written warranties and/or guarantees of the materials and equipment under this Purchase Order as required by the Contract Documents. Supplier guarantees that the items furnished hereunder shall develop the rating capacities, functions, and characteristics called for in the Contract Documents. Further, Supplier will immediately upon notice, remove, repair or replace any non-conforming or defective materials or equipment.
- b. Should required corrections to non-conforming or defective items not be undertaken within seventy-two (72) hours after written notice to the Supplier, the Purchaser may take remedial action to correct deficiencies, including equipment replacement if necessary, at Supplier's sole cost and expense.
- c. Unless a longer warranty period is stated in the Contract Documents, the warranty period on equipment and materials supplied hereunder shall be for one (1) year after the Owner's acceptance of the Project.

11. **Indemnification**

Supplier shall defend, indemnify and save harmless the Purchaser, Prime Contractor, and Owner and their affiliates, agents, officers and employees from and against any and all claims, loss, damage, injury, liability, costs and expenses of whatsoever kind or nature, including attorneys' fees, howsoever the same may be caused arising out of or attributable to the materials or equipment under this Purchase Order, except where such loss, damage, injury, or liability is directly caused by the sole negligence of the Purchaser. Supplier's indemnity obligation hereunder shall not be limited in any manner by the provisions of any workers' compensation or similar act.

12. **Patent Indemnification**

Supplier shall defend, indemnify and save harmless the Purchaser, Prime Contractor, and Owner, and their affiliates, agents, officers and employees from and against any liability for damages and any loss and expense, including attorneys' fees, sustained by reason of patent infringement claims with respect to anything furnished hereunder, and Supplier will defend any infringement action brought against the Purchaser and/or Owner.

13. **Laws and Regulations**

Supplier agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations, including but not limited to those relative to equal employment opportunity, occupational safety and health.

Supplier warrants that the products supplied hereunder comply with the Federal and State Occupational Safety Health Act including, but not limited to, OSHA Standard 1926.59 for a Hazardous Communication Standard Policy. Supplier shall submit to Purchaser all Material Safety Data Sheets ("MSDS") and Hazardous Substance Survey Forms ("HSSF") for all materials for which the MSDS and the HSSF are required by OSHA prior to shipping any such materials to Purchaser.

14. **Maintenance and Operating Instructions**

- a. Supplier shall furnish installation, maintenance, and operating instructions, including parts lists, in quantities required by the Purchaser within sixty (60) days from the date of this Purchase Order. Failure to provide these instruction manuals within the sixty (60) day period will allow the Purchaser to retain twenty percent (20%) of the Purchase Order price until receipt of these manuals.

- b. Manufacturer's standard brochures or manuals must be modified to reflect only the model or series of equipment furnished including any field or special modifications.
- c. Instructions should include: An Index, the Manufacturer's Name, Address and Phone Number, the Procedures for Operation, Start-up, Maintenance, Calibration and Trouble Shooting, Complete Parts Lists, in addition to other data required by the Contract Documents.
- d. Supplier shall furnish qualified personnel to provide operating and maintenance instructions to Owner's personnel, without additional cost to the Purchaser, if the Contract Documents applicable to the material or equipment furnished hereunder require the manufacturer to furnish such instructions.
- e. Supplier shall furnish shop tests, installation check, supervision for start-up and performance testing as required by the Contract Documents.
- f. Applicable spare parts and special tools as required by the Contract Documents are included in this Purchase Order.

15. **WITHHOLDING PAYMENT**

Purchaser may withhold amounts otherwise due under this Purchase Order, or under any other agreement between the parties, to cover Purchaser's reasonable estimate of any costs, liquidated damages or liabilities Purchaser has incurred or may incur for which Supplier may be responsible under any other arrangement between the parties, or by law. Notwithstanding any other provision of this Purchase Order, payment to Supplier is expressly conditioned upon receipt by Purchaser or payment from the prime contractor and/or owner for the equipment, materials and/or work provided by Supplier pursuant to this Purchase Order.

16. **WAIVER OF LIENS**

Supplier agrees to furnish, prior to any payments hereunder, evidence satisfactory to Purchaser, the prime contractor, the owner or any of them that payment had been made for all labor and materials used in filling the Purchase Order. To the fullest extent permitted by law, Supplier shall furnish all necessary lien or bond waivers, affidavits or other documents to release Supplier's right or rights to liens or bonds or claims arising out of the furnishing of the equipment, materials or work and right to file lien or claim against the contractor, principal contractor or owner or the owner's property. In the event liens or claims of any kind are filed by anyone in relation to this Purchase Order, Supplier shall have the lien or claim discharged, within three (3) days of receipt of written notice by posting a bond or other security, and if not so discharged, Purchaser may discharge the lien or claim and hold Supplier responsible for all costs in connection therewith, including without limitation attorneys' fees.

17. **Disputes**

In the event of any dispute between the Purchaser and Supplier due to any action or inaction of the Owner or Prime Contractor or involving the Contract Documents, the Supplier shall be bound to any disputes procedure to which the Purchaser may be bound under the Contract Documents and to any decision rendered thereunder, provided the Supplier is given notice that such dispute procedure has been demanded by any party, whether the Supplier elects to participate in such procedure or not. The Supplier shall bear the burden of proving its claims and of refuting claims made against it through the Purchaser by Owner or Prime Contractor and shall bear all costs, expenses and fees in connection therewith.