



## CONSENSUSDOCS 702 STANDARD FORM PURCHASE ORDER

This document was developed through a collaborative effort of entities representing a wide cross-section of the construction industry. The organizations endorsing this document believe it represents a fair and reasonable consensus among the collaborating parties of allocation of risk and responsibilities in an effort to appropriately balance the critical interests and concerns of all project participants.

These endorsing organizations recognize and understand that users of this document must review and adapt this document to meet their particular needs, the specific requirements of the project, and applicable laws. Users are encouraged to consult legal, insurance and surety advisors before modifying or completing this document. Further information on this document and the perspectives of endorsing organizations is available in the ConsensusDOCS Guidebook.

Purchase Order #:

Date:

BUYER

(Bill To Address if Different)

SELLER

PROJECT

OWNER

### 1. GENERAL INFORMATION

Delivery/ Shipment Date: \_\_\_\_\_

Required on Jobsite Date: \_\_\_\_\_

**IMPORTANT:** A vertical line in the margin indicates a change has been made to the original text. Prior to signing, recipients may wish to request from the party producing the document a "redlined" version indicating changes to the original text. Consultation with legal and insurance counsel and careful review of the entire document are strongly encouraged.

ConsensusDOCS 702 • STANDARD FORM PURCHASE ORDER Copyright © 2007, ConsensusDOCS LLC. YOU ARE ALLOWED TO USE THIS DOCUMENT FOR ONE CONTRACT ONLY. YOU MAY MAKE 9 COPIES OF THE COMPLETED DOCUMENT FOR DISTRIBUTION TO THE CONTRACT'S PARTIES. ANY OTHER USES, INCLUDING COPYING THE FORM DOCUMENT, ARE STRICTLY PROHIBITED.

Delivery Location: \_\_\_\_\_

Terms: \_\_\_\_\_

F.O.B.: \_\_\_\_\_

Ship Via: \_\_\_\_\_

## 2. MATERIALS OR EQUIPMENT

ITEM	QUANTITY	UNIT	DESCRIPTION (Ref.specs as applicable)	UNIT PRICE	ITEM PRICE
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3. PRICE Buyer shall pay Seller for the provision of material and/or equipment and for any incidental services as identified in Article 2 the total sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Prices stated on this Purchase Order include all applicable federal, state and local taxes. Unless otherwise indicated, prices shall not include costs or deposits for shipping or packing materials.

4. ACCEPTANCE OF CONTRACT Acceptance of this Purchase Order shall be limited to the terms and conditions stated herein, and any additional or different terms, conditions or instructions proposed by Seller are rejected by Buyer unless expressly assented to in writing by Buyer. Seller shall be bound by this Purchase Order when it executes and delivers the original copy or when it delivers to Buyer any of the materials or equipment or renders for Buyer any of the incidental services ordered.

5. EXTENT OF AGREEMENT To the extent incidental services are performed by Seller under this Purchase Order for the sale of goods, such incidental services shall be regarded as goods. Nothing in this Purchase Order shall be construed to create a contractual relationship between persons or entities other than the Buyer and Seller. Except as otherwise provided in the contract between Owner and Buyer for the Project ("Contract"), a copy of which is attached, this Purchase Order is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

6. CHANGES Buyer shall have the right at any time to make changes in specifications, drawings or other data incorporated in this Purchase Order, methods of shipment or packing, place of delivery, and time of delivery. Any difference in price resulting from such changes shall be equitably adjusted and this Purchase Order shall be modified in writing accordingly.

7. DRAWINGS AND SPECIFICATIONS All drawings, specifications and other data submitted to Seller and referred to on the face of this Purchase Order are incorporated herein and made a part of this Purchase Order. In addition, the general provisions of the Contract, including requirements for submittals and payment applicable to materials or equipment to be provided under this Purchase Order, and any safety requirements of the Buyer are attached and incorporated by reference. All materials and equipment

furnished shall conform to the drawings, specifications, and other information incorporated herein.

8. **SUBMITTALS** The Seller promptly shall submit for approval to the Buyer all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Purchase Order. The Seller shall be responsible to the Buyer for the accuracy and conformity of its submittals to the Purchase Order. The Seller shall prepare and deliver its submittals to the Buyer in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay the Buyer or Owner in the performance of the Contract. The approval of any Seller submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Purchase Order unless express written approval is obtained from the Buyer and Owner authorizing such deviation, substitution or change. In the event that the Contract does not contain submittal requirements pertaining to the Purchase Order, the Seller agrees upon request to submit in a timely fashion to the Buyer for approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Contractor, Owner or Architect/Engineer. The Buyer and Owner are entitled to rely on the adequacy, accuracy and completeness of any professional certifications required by the Purchase Order concerning the performance criteria of systems, equipment or materials, including all relevant calculations and any governing performance requirements.

9. **SCHEDULE** Time is of the essence of this Purchase Order. Seller shall provide Buyer with any scheduling information proposed by the Seller. In consultation with the Seller, Buyer shall prepare a coordinated Progress Schedule, and furnish such to Seller. Seller shall furnish and deliver the materials or equipment indicated in Article 2, in strict accordance with such Progress Schedule.

10. **SHIPPING** Shipping instructions furnished by Buyer shall be strictly complied with and shall be considered a part of this Purchase Order. Seller shall give Buyer twenty-four (24) hours notice prior to the delivery of any materials or equipment. Any provisions for delivery of materials or equipment by installment shall not be construed as making the obligations of Seller severable. Shipments sent C.O.D. without the Buyer's written consent may be rejected and shall be at Seller's risk. Risk of loss and/or damage shall be upon Seller until the materials or equipment are physically delivered to Buyer at the Project or other authorized destination, unless otherwise agreed to in writing and signed by Buyer, or if covered by project all risk or equivalent insurance.

11. **MATERIAL SAFETY DATA (MSD) SHEETS** Seller shall submit to the Buyer all Material Safety Data Sheets required by law for materials or substances sold to Buyer.

12. **INSPECTION** Except as otherwise provided in this Purchase Order, all shipments shall be subject to final inspection by Buyer after receipt by Buyer at destination. Shipments shall be accompanied by detailed delivery tickets to assist the Buyer in its inspection. Buyer shall have the right to reject and refuse acceptance of materials or equipment that are not in accordance with specifications, drawings or other data identified in Article 2 or Seller's warranty as provided in Article 15. Buyer may deduct from any amount owed to Seller under this Purchase Order the reasonable cost of inspecting materials or equipment rejected. Materials or equipment not accepted shall, at Buyer's option be (a) returned to Seller at Seller's expense; (b) held by Buyer at Seller's expense; (c) held by Buyer for an equitable reduction in price; (d) repaired by Buyer at Seller's expense. Payment for any materials or equipment shall not constitute acceptance. Buyer shall have the right to inspect all materials or equipment during any stage of manufacture or production by Seller or Seller's supplier(s), to audit quality assurance programs, and to otherwise assure quality control in the production and manufacture of the materials or equipment hereunder by Seller or Seller's supplier(s), and Seller shall provide reasonable access, facilities, and assistance for the safe and convenient inspection and/or audit at Seller's plant or its supplier(s) plant. Incorporation of the materials or equipment into the Project shall constitute acceptance by Buyer of such materials or equipment and incidental services, subject to Seller's warranty obligations. Acceptance by

Buyer shall not constitute acceptance as to latent or hidden defects not subject to discovery upon reasonable inspection.

13. CANCELLATION Should Seller fail to deliver items and materials or perform the incidental services required within the time provided under this Purchase Order or any mutually agreed upon extension of time, or should Seller fail to perform any of the provisions of this Purchase Order or fail to make progress so as to endanger performance of this Purchase Order in accordance with its terms, Buyer may cancel this Purchase Order. Such cancellation should be in writing. The rights and remedies of Buyer provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

14. TERMINATION The Buyer may at any time, with seven (7) Days written notice to Seller, terminate this Purchase Order for the convenience of the Buyer. In the event of such termination for convenience the Buyer shall pay Seller as its entire and sole compensation its actual and reasonable costs of furnishing materials or equipment to the date of termination, as determined by audit of the Seller's records, plus a reasonable markup for overhead and profit, but in no event shall such amounts due hereunder exceed the total Purchase Order Price. Seller shall make its records available at reasonable times and places for Buyer's audit. In the event any termination of the Seller for default under Article 13 is later determined to have been improper, the termination shall automatically be deemed a termination for convenience, and the Seller shall be limited in its recovery strictly to the compensation provided for in this article.

15. WARRANTY In addition to any warranty in fact or implied by law, Seller hereby expressly warrants that all materials or equipment covered by this Purchase Order shall conform to the drawings, specifications, data, samples or other description, furnished or incorporated as part of this Purchase Order in accordance with Article 7, and shall be fit and sufficient for the purpose intended, merchantable of good material and workmanship and free from defect. Seller specifically warrants and guarantees the materials or equipment and shall make good at Seller's expense, any defect in materials or workmanship that may be discovered, excluding ordinary wear and tear, abuse, lack of proper maintenance and modification not performed by Seller. These warranties shall survive inspection, acceptance and payment of and for said materials or equipment. These warranties shall extend to the Buyer, its successors, assigns, customers and users of its customers' products and Seller shall provide directly to the ultimate users written evidence of these warranties as required.

16. PAYMENT Payment for acceptable material or equipment shall be made by Buyer in accordance with any terms indicated in Article 1 and after a) receipt by Buyer of the executed original copy of this Purchase Order, and receipt of Seller's invoice. If and when requested by Buyer, Seller shall promptly provide affidavits that all of Seller's suppliers have been paid, and release of all liens either by Seller or Seller's supplier(s) and claims executed by Seller to Buyer in a form suitable to Buyer. Such releases or waivers of lien may be conditioned upon payment. Prior to final payment, Seller shall provide to Buyer copies of warranties, applicable manuals and all other close-out documents required for the materials or equipment by this Purchase Order.

17. INSURANCE In the event that Seller or its employees or agents are required to come onto a Worksite or project of Buyer in connection with the sale of materials or equipment or the rendering of incidental services under this Purchase Order, including delivery of materials, Seller shall, prior to entrance of the Worksite or delivery of materials purchase and maintain insurance that will protect it from the claims arising out of its operations under this Purchase Order, including Worker's Compensation Insurance, Commercial General Liability and Automobile Liability Insurance. The Seller shall maintain at least the limits of liability in a company satisfactory to the Buyer as set forth in Exhibit A.

18. **SAFETY** The Buyer contracts with the Seller as an independent contractor to provide all labor, materials, equipment and incidental services necessary or incidental to perform this Purchase Order, subject as an employer to all applicable unemployment compensation, occupational health and safety, or similar statutes. Seller shall comply with all current safety requirements of the Buyer identified in this Purchase Order, as well as all federal, state and local laws and regulations.

19. **INDEMNITY** To the fullest extent permitted by law, Seller shall indemnify and hold harmless Buyer and its agents, consultants, employees and others as required by this Purchase Order from and against any and all liabilities whatsoever for damages or injuries to persons or property which may be incurred by Buyer by virtue of defective materials or workmanship in the materials or equipment furnished, including all costs and reasonable attorneys' fees incurred. In addition, Seller agrees to indemnify and hold harmless Buyer from any costs arising out of a breach of warranty or incurred in connection with the enforcement of warranty under Article 15.

19.1 In the event that Seller, its employees or agents are required to come onto a Worksite or Project of Buyer in connection with the performance of this Purchase Order, without limiting Seller's obligations under Article 19 and to the fullest extent permitted by law, Seller shall indemnify and hold harmless Buyer and its agents, consultants, employees and others as required by this Purchase Order from all claims for bodily injury and property damage that may arise out of the Seller's presence on the Worksite in connection with the performance of this Purchase Order, but only to the extent of negligent acts or omissions of Seller or anyone employed directly or indirectly by Seller or by anyone for whose acts Seller may be liable.

19.2 To the fullest extent permitted by law, Seller shall indemnify and hold harmless Buyer and its agents, consultants, employees and others as required by this Purchase Order from and against any and all claims or damages it may incur due to Seller's failure to provide timely performance in accordance with this Purchase Order. To the extent the Owner/Buyer agreement provides for a mutual waiver of consequential damages by the Owner and Buyer, the Buyer and Seller waive claims against each other for consequential damages arising out of or relating to this Purchase Order.

20. **PATENTS** Seller shall indemnify and hold Buyer harmless from all suits or claims for infringement of any patent rights or copyrights arising out of the use or sale of the materials or equipment purchased and shall pay and discharge any and all judgments or decrees that may be rendered in any such suit, action or proceedings. Seller's obligations under this Article 20 shall not apply to materials or equipment specified by the Buyer.

21. **COMPLIANCE WITH LAWS** Seller shall comply with all federal, state and local laws, regulations, codes and ordinances (the Laws) applicable to Seller, Buyer, and/or the incidental services covered by this Purchase Order, including but not limited to any such Laws relating to health and safety of any person; the environment; hazardous substances; labor and employment; immigration; disadvantaged business enterprises; and civil rights. Seller shall be liable to Buyer for all loss, cost and expense attributable to any act or omission by the Seller resulting from the failure to comply with laws, including, but not limited to, any fines, penalties or corrective measures.

22. **ASSIGNMENT** No assignment of this Purchase Order or of any right, obligation or interest in proceeds or any delegation of duty under this Purchase Order shall be made without the express written consent of Buyer's authorized agent and any attempted assignment or delegation without such consent shall be void.

23. **WAIVER** Buyer's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege provided in this Purchase Order, or its waiver of any breach, shall not

thereafter waive any such term, condition, instruction, and/or any right or privilege.

24. GOVERNING LAW This Purchase Order shall be governed by the law in effect at the location of the Project.

25. DISPUTES If a dispute arises out of or relates to this Purchase Order, the Parties shall endeavor to settle the dispute through direct discussion. Disputes between the Buyer and Seller not resolved by direct discussion shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association. The Parties shall select the mediator within fifteen (15) Days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution. If neither direct discussions nor mediation successfully resolve the dispute, the Parties agree that the following shall be used to resolve the dispute. (Check one selection only.)

Arbitration. Arbitration shall be pursuant to the Construction Industry Rules of the American Arbitration Association unless the Parties mutually agree otherwise. The administration of the arbitration shall be as mutually agreed by the Parties.

Litigation. Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

25.1 COST OF DISPUTE RESOLUTION The cost of any mediation proceeding shall be shared equally by the Parties participating. The costs of any binding dispute resolution procedures shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

25.2 VENUE The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.

26. JOINT DRAFTING The Parties expressly agree that this Purchase Order was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Purchase Order shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

27. EXHIBITS The following Exhibits are incorporated by reference and made part of this Agreement:

EXHIBIT A: Insurance Provisions, \_\_\_\_\_ pages

BUYER: \_\_\_\_\_

BY: .....

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST: .....

SELLER: \_\_\_\_\_

BY: .....

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST: .....

WAR Construction, Inc.

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