

PMI INDUSTRIES, INC. MASTER TERMS AND CONDITIONS OF PURCHASE

Seller and PMI Industries, Inc. ("Buyer") agree to be bound by all the terms and conditions contained or incorporated herein, all of which are a part of this Purchase Order Agreement (the "Purchase Order"). Any provisions in Seller's proposal, invoices, billing statements, acknowledgment forms or similar documents which are inconsistent with the provisions of this Purchase Order shall be of no force or effect, regardless of whether such provisions would materially alter the terms hereof.

I. ORDER AND ACCEPTANCE: Seller's commencement of or promise of shipment or furnishing of the subject matter of this Purchase Order (the "merchandise or services") shall constitute Seller's agreement that it will deliver the merchandise or services in accordance with the terms and conditions of this Purchase Order. Seller agrees to follow the shipping and invoicing instructions issued by Buyer, which instructions are incorporated by reference into this Purchase Order. Shipment by Seller of any part of the merchandise or services ordered herein shall constitute an acceptance of this order for all of the merchandise or services ordered herein and acceptance of these terms, conditions, and instructions. Any request or demand for, or statement purporting to make Seller's acceptance conditional on Buyer's assent to, additional or different terms shall be of no effect unless Buyer accepts the changes in writing and initials the changes on the face hereof. Buyer may revoke or modify this Purchase Order at any time prior to acceptance by Seller. Stenographic, arithmetic and clerical errors are subject to correction.

2. INCORPORATION BY REFERENCE: The general, special and supplemental conditions, drawings, plans, specifications and delivery and construction schedules referred to herein or in the attached Schedule 1 are specifically incorporated by reference and are made a part of this Purchase Order. Seller agrees to furnish and/or perform all portions of the work hereunder for Buyer, subject to and in strict accordance with the terms and conditions set forth in this Purchase Order and all such general, special and supplemental conditions, drawings, plans, specifications, and delivery and construction schedules referenced herein or the attached Schedule 1. It is further understood and agreed that all documents between Buyer and Buyer's customer also are incorporated into this Purchase Order by

reference and are made a part hereof. Seller represents and agrees that it has examined and understands this Purchase Order and the referenced and incorporated documents. The documents (other than provisions relating to the contract price or fee payable to Buyer) have been made available to Seller and will remain available to Seller at reasonable times at the branch office of Buyer that is managing the Project. This Purchase Order and the provisions of the referenced documents are intended to supplement and complement each other and shall, where possible, be so interpreted. If, however, any provision of this Agreement conflicts with a provision of the referenced documents, or if there is a conflict within this Purchase Order or within any of the referenced documents, the provision imposing the higher quality, greater quantity or greater duty or obligation on Seller shall govern. Seller shall be bound by all interpretations of the Contract Documents made by Buyer's customer and furnished to it by Buyer that are binding upon Buyer. Seller further agrees to be bound by and to assume toward Buyer all the terms, obligations, responsibilities and conditions of the referenced and incorporated documents to the same extent that Buyer, in turn, is bound by such referenced documents to the owner or Buyer's customer, including but not limited to, any and all claims or damages asserted by the owner or Buyer's customer resulting from Seller's merchandise or services, or the delivery or delay thereof (such as liquidated damages or others).

3. PRICES: Unless otherwise specified, prices are F.O.B. Buyer's facility and/or jobsite as specified in the Purchase Order or otherwise directed by Buyer, and prices include the amounts of all applicable sales, use, transfer, excise or other taxes, tariffs or custom duties.

4. TERMS OF PAYMENT: Terms of payment, unless otherwise expressly agreed in

writing, are as set forth on the face of the Purchase Order (including payment terms incorporated herein by reference), except that risk of loss with respect to nonconforming merchandise or services shall not pass to Buyer unless and until nonconformities are cured or Buyer accepts the merchandise or services in writing notwithstanding the nonconformities. All payments shall be made in United States currency. Payment shall not be to the prejudice of any claims that Buyer might have against Seller on account of omissions, delays, or shortages in shipment or defects or deficiencies in the merchandise or services. Seller shall submit, as a condition precedent to any payment, details of cost, waivers of lien, and sworn statements and any other documentation (in form and substance satisfactory to Buyer) as Buyer may request from time to time. Notwithstanding any provision herein to the contrary, if Buyer is incorporating the Seller's merchandise and services into a project for a third party or delivering Seller's merchandise and services for the benefit of Buyer's customer, then Seller understands and agrees that Buyer's receipt of payment from Buyer's customer on account of Seller's merchandise and services is an express and absolute condition precedent to Buyer's obligation to pay Seller. Seller hereby assumes the risk of default or nonpayment by Buyer's customer, and the creditworthiness of Buyer's customer. Seller shall not be entitled to recover interest on late or past due payments.

5. NO ASSIGNMENT: Seller may not assign any rights or delegate any duties that Seller may have under this Purchase Order, in whole or in part. Any assignments or delegation in violation of the foregoing is void and not binding on Buyer unless the prior written consent of Buyer is obtained. No such assignment or delegation shall bar Buyer from asserting against Seller or the transferee, or both, any claim or rights that Buyer may have against Seller, including rights of recoupment or set-off.

6. UNAVOIDABLE CANCELLATION: Buyer reserves the right to cancel this order in whole or in part in the event of lockout, strike, unavoidable accident, riot, war, act of God, fire, flood, earthquake, or any other casualty whatsoever affecting Buyer. Such cancellation

shall be without penalty to Buyer and subject to Paragraph 7.

7. CANCELLATION FOR CAUSE: This Purchase Order is not subject to cancellation or modification by Seller, in whole or in part, except with Buyer's express written consent. Buyer may terminate and rescind all or part of this Purchase Order upon three (3) days prior written notice and opportunity to cure in the event that (i) Seller breaches or fails to perform any of its obligations, or (ii) Seller becomes insolvent or proceedings are instituted by or against Seller under any provisions of any federal or state bankruptcy or insolvency laws, or (iii) Seller ceases its operations, or (iv) Buyer requests adequate assurance of due performance and Seller fails to provide such assurance in writing within three (3) days after the date of Buyer's request therefor. *Time is of the essence to this Purchase Order*, and Seller's failure to meet any delivery date shall constitute a breach of this Purchase Order. Merchandise or services shipped under this Purchase Order after the cancellation date on the reverse side may be returned at Seller's expense, plus Buyer's administration expense. Buyer shall have the right to deduct the cost of remedying the default and completing the Seller's performance hereunder, and Buyer may deduct the cost of completion for sums otherwise due or to become due Seller. In the event that a termination or cancellation under this paragraph is determined to be unjustified or wrongful, then the termination or cancellation shall be treated as a Convenience termination under paragraph 8, and Seller's remedies and damages are limited as provided for therein.

8. CONVENIENCE CANCELLATION / SUSPENSION: Buyer shall have the option at any time (whether or not Seller is in default) upon written notice to Seller to cancel or terminate this Purchase Order in whole or in part as to the undelivered portion of the merchandise or services to be furnished by Seller hereunder, or to delay or suspend the delivery or completion of all or part of the merchandise or services. Such termination or delay shall be without cost to Buyer. Seller only shall have the right to compensation (a) in the case of termination, for actual costs of merchandise and services furnished by Seller in connection with this Purchase Order prior to such termination; provided, however, that in no event shall such amount, together with all

previous payments made to Seller, exceed the price(s) set forth in this Purchase Order; or (b) in the case of delay or suspension, for reasonable handling and storage charges or overhead damages and other indirect expenses. Under no circumstances shall Seller be entitled to anticipated profits or lost profits for merchandise or services that remain to be furnished or performed. Seller also shall not be entitled to storage charges or other consequential or incidental damages or termination costs or expenses.

9. **SELLER'S REPRESENTATIONS AND WARRANTIES:** Seller represents and warrants to Buyer, in addition to all warranties implied by law, that each item of merchandise or services described on the face hereof, together with all related packaging and labeling and other material or work furnished by Seller, shall (a) be free from defects in design, workmanship or materials including, without limitation, such defects as could create a hazard to life or property or defect in Seller's or Buyer's work; (b) conform in all respects with all applicable federal, state and local laws, orders and regulations, including, but not limited to, those regarding occupational safety and health and wage and hour laws; (c) not infringe or encroach upon Buyer's or any third party's personal, contractual or proprietary rights, including patents, trademarks, copyrights, rights of privacy or trade secrets; and (d) conform to all of Buyer's specifications and to all articles shown to Buyer as samples of Seller's as merchandise or services. All warranties set forth in this Section 8 or in any other part of this Purchase Order (including warranties incorporated herein by reference), or which law implies, shall survive any inspection, delivery, acceptance or payment by Buyer. Such warranties shall be in addition to Buyer's other rights and remedies, and shall not be construed or a limitation on Buyer's claims or rights, including the right to enforce the Purchase Order against Seller for the applicable statutes of limitation. Subject to the foregoing, Buyer warrants all goods and services for a period of two (2) years from the date of delivery or completion of Seller's performance under the Purchase Order. In the event of a warranty claim, Seller shall promptly remove and replace any defective or nonconforming merchandise or services at Seller's sole cost and expense. Seller also shall be responsible for the cost of correcting the goods and work and property of

Buyer or others damaged by Seller's defective merchandise or services, including goods and work of Buyer and others that are damaged by Seller in connection with Seller's performance of warranty work.

10. **MERCHANTABILITY:** Seller represents and warrants to Buyer that all merchandise or services delivered or performed pursuant to this Purchase Order will be merchantable at the time of delivery to Buyer and at the time of use by Buyer's customers, and will be fit and safe for sale and use by Buyer or its customers for which such items are ordinarily intended and for any particular intended use of which Seller or its agents have actual or constructive knowledge.

11. **FAIR LABOR STANDARDS ACT:** In accepting this Purchase Order, Seller shall be deemed to represent that the merchandise or services was or will be produced or performed in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. Unless otherwise agreed in writing, Seller shall insert a certificate on all invoices submitted in connection with this Purchase Order stating that the merchandise or service covered by the invoice was produced in compliance with applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.

12. **NON-DISCRIMINATION IN EMPLOYMENT:** In accepting this Purchase Order, Seller shall be deemed to represent that the merchandise or services to be furnished and/or performed hereunder was or will be produced or performed in compliance with Executive Order 11246 and regulations issued thereunder, and any other standards, rules and regulations that apply to the project of Buyer's customer, including those that are incorporated by reference into this Purchase Order.

13. **INDEMNIFICATION:** Seller shall reimburse, indemnify, hold harmless, and defend Buyer, Buyer's customer, the project, and the project owners (and their respective officers, employees, partners, agents and representatives) from and against any claim, lien, cause of action, lawsuit, demand, fine, penalty, assessment, loss, expense or damage

of whatever kind or description (including legal fees) arising from or relating to Seller's performance under this Purchase Order, Seller's negligence or other wrongful acts, or Seller's breach of this Purchase Order. The scope of this indemnity agreement includes, without limitation, any and all claims, damages, demands, assessments, or lawsuits for personal injury, death or property damage, which may result from Seller's negligence or other wrongful acts or Seller's breach of this Purchase Order or its representations and warranty obligations under this Purchase Order or which may result from any products liability claims relating to the merchandise or services. Without limiting the foregoing, Seller agrees to maintain product liability insurance providing Broad Form Seller's Coverage in an amount not less than that customarily maintained by comparable suppliers and, at Buyer's request, Seller will provide Buyer with a Certificate of Insurance evidencing such coverage, which Certificate of Insurance shall identify Buyer as a named insured. Seller further agrees to indemnify, defend and hold Buyer, the project, and the project owners (and their respective officers, employees, partners, agents and representatives) harmless from and against any and all liens, claims, damages, demands and causes of action by any lower tier subcontractors, suppliers, vendors, laborers and other persons or entities arising from or relating in any way to any work or materials furnished hereunder. The scope of this indemnity agreement applies to the acts or omissions of Seller, its agents, employees, lower tier subcontractors and suppliers, or anyone for whom Seller is legally responsible. Furthermore, in the event of an accident or injury involving an employee of Seller, Seller acknowledges and agrees that Seller's duty to indemnify shall not be limited by Seller's immunity or limitation of liability under the constitution, any statute, the Workers' Compensation laws, the disability benefit acts or any other rule or regulation, it being understood and agreed that Seller hereby expressly waives such immunity and limitation of liability for purposes of this paragraph.

14. **WORK ON BUYER'S PREMISES:** If Seller's merchandise and services under this Purchase Order involves operations by Seller on the premises of Buyer or Buyer's customer, shall be bound, in addition to these Terms and Conditions, to Buyer's standard Rider to

Purchase Order for Construction Work on Premises, which is incorporated by reference. Seller shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work. Except to the extent that any such injury is due solely and directly to Buyer's negligence, Seller shall indemnify and defend Buyer and Buyer's customer from and against all loss which may result in any way from any act of omission of the Seller, its agents, employees, or subcontractors. Seller shall maintain such public liability, property damage, and employer's liability and compensation insurance as will protect Buyer from said risks and from any claims under any applicable Workers' Compensation and Occupational Disease Acts.

15. **BUYER'S PROPERTY:** Unless otherwise agreed in writing, all designs, drawings, plans, specifications, artwork, patterns, tools and/or dies of every description furnished to Seller by Buyer or unconditionally appropriated to the contract, or any replacement thereof, or any materials affixed or attached thereto, shall be and remain the property of Buyer. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as property of Buyer and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's orders. Such property while in Seller's custody or control shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer and shall be subject to removal at Buyer's written request, in which event Seller shall prepare such property for shipment and shall re-deliver it to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Seller shall not use any of Buyer's property for any other purpose, and Seller shall not use or misappropriate any of Buyer's confidential or proprietary information, technology, or intellectual property for any purpose other than Seller's fulfillment of its obligations to Buyer under this Purchase Order.

16. **SHOP DRAWINGS:** Seller shall, at its own expense, prepare and submit to Buyer such shop drawings, samples, models and other submittals for the merchandise or

services as may be requested by Buyer. Such shop drawings, samples, models and other submittals shall be approved in writing by such persons as Buyer may designate before Seller proceeds under this Purchase Order. No approval of any submittals nor the making of any payment to Seller shall constitute an acceptance of any merchandise or services or impair Buyer's right of inspection or rejection or any other rights or remedies to which Buyer may be entitled, or relieve Seller from any of its obligations or warranties hereunder.

17. OWNERSHIP OF DOCUMENTS:

All plans, drawings, reports, manuals, specifications, test data or other documents or information prepared by Seller pursuant to this Purchase Order shall be furnished to Buyer and shall be the property of Buyer, and Buyer shall have the unlimited right to publish, transfer, sell, license and use all or any part of such documents or information without additional payment to Seller.

18. CONFIDENTIALITY: Any specifications, drawings, notes, instructions, engineering notices, technical data or other information, or intellectual property furnished or disclosed by Buyer to Seller in connection with this Purchase Order, or prepared by Seller pursuant to this Purchase Order, shall be treated as secret and confidential by Seller. Seller shall not, without Buyer's prior written consent, use or disclose any such document or information to any party other than those employees of Seller who require the same for the performance of their duties in connection with this Purchase Order. Seller further agrees that it will return and/or destroy any and all information, documents and tangible things comprising or relating to Buyer's confidential or proprietary information or intellectual property.

19. NON-SOLICITATION: During Seller's performance of its duties under this Purchase Order and for a period of three (3) years following the completion of the Project for which Seller is furnishing merchandise or services, neither Seller nor its officers, directors, representatives, employees, or related entities will, directly or indirectly, use Buyer's trade secrets, technology, intellectual property, or confidential or proprietary business information, with which it has come in contact in performing this Purchase Order, to attempt to

call on, solicit, or take away any accounts of Buyer or any of Buyer's present or prospective customers, whether for itself or for another person or entity. Seller also shall not attempt to recruit, solicit, or take away any of the employees or consultants of Buyer, for or with whom it works at any time during this Purchase Order.

20. DEDUCTIONS AND SET-OFF: Any sums payable to Seller shall be subject to all claims and defenses of Buyer or any of its affiliated companies, whether arising from this or any other transaction or occurrence, and Buyer may set-off and deduct against any such sums all present and future indebtedness of Seller or any of its affiliated companies to Buyer or any of its affiliated companies under this Purchase Order or relating to any other project or claim.

21. DEFECTIVE MERCHANDISE OR SERVICES: Notwithstanding prior payment, Buyer reserves the right to return, at any time, for full credit at Seller's expense (including but not limited to cost of packing and transportation to and from source) and risk, all or any part of the merchandise or services shipped or work performed hereunder which is defective in material or workmanship or which differs in any way from any drawings, specifications and warranties herein contained or implied by law or which otherwise does not conform to the requirements of this Purchase Order, and Seller shall have no right thereafter to cure such defects or failure to conform to such specifications and warranties. Buyer reserves the right, but shall not be obligated, to repair any defects and debit from the Seller any expenses involved when in Buyer's sole judgment the cost of making such repairs would be less than the cost of replacement by Seller or cancellation of this Purchase Order. Buyer reserves the right, but shall not be obligated, to require Seller to repair or replace, at Buyer's option, defective or non-conforming merchandise or services, at Seller's expense. If Buyer returns defective merchandise or services or rejects nonconforming work as authorized by this Paragraph, Buyer may additionally cancel any remaining portion of this Purchase Order in accordance with the terms hereof.

22. **INSPECTION:** Buyer may inspect and test the merchandise or services during manufacture, construction, or preparation and shall have the right to inspect the merchandise or services or work at the time of delivery and/or completion. Multiple inspections shall not be grounds for objection by Seller. Notwithstanding previous inspections by Buyer, if defects or nonconformities for which Seller is responsible under the terms of this Purchase Order are revealed by subsequent inspection, analysis, manufacturing operations, use or otherwise, Buyer may reject or revoke its acceptance of the merchandise or services or any part thereof at any time after such defects or nonconformities are discovered or pursue its rights or remedies under Section 20 hereof or otherwise.

23. **PASSAGE OF TITLE:** Payment of freight charges shall not affect passage of title. Until Buyer has inspected the merchandise or services shipped or furnished under this order and has accepted it as being in conformity with all representations made by Seller when it was ordered, Seller's delivery obligation shall not be deemed complete, nor shall title pass to Buyer. Seller represents and warrants to Buyer that Seller shall have good title to the merchandise or services, free and clear of all liens at the time of Seller's delivery or furnishing of the merchandise or services.

24. **CHANGES:** Buyer shall have the right to make changes in this Purchase Order, but no additional charge will be allowed unless previously authorized in writing by Buyer. If such changes affect delivery or the price sought by Seller, Seller shall notify Buyer immediately and in all cases before shipment or delivery. There shall be no adjustment to the time of delivery or price to be paid for merchandise or services unless and until Buyer signs a change order authorizing the same.

25. **CONTRACT AND JURISDICTION:** This Purchase Order and the effect of any contract formed pursuant hereto shall be construed and enforced in accordance with the laws of the State of Ohio.

26. **NON-WAIVER:** The failure of the Buyer to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions or

of the right of Buyer thereafter to enforce each and every such provision.

27. **LICENSES:** Seller shall obtain and pay for any licenses, permits or inspections required by any governmental authority in connection with the manufacture, completion or delivery of the merchandise or services or Seller's performance of this Purchase Order.

28. **MISCELLANEOUS:** (a) All rights granted to Buyer hereunder shall be in addition to and not in lieu of Buyer's rights arising by operation of law; (b) any provisions of this Purchase Order which are typewritten or handwritten by Buyer shall supersede any contrary or inconsistent printed provisions; (c) no modification of the terms of this Purchase Order shall be valid unless in writing and signed by Buyer; (d) should any of the provisions of this Purchase Order be declared by a court of competent jurisdiction or any arbitrator to be invalid, such decision shall not affect the validity of any remaining provisions; (e) all of the terms herein shall apply to additional quantities of merchandise or services or work ordered by Buyer except to the extent covered by a new purchase order; (f) this Purchase Order, together with any information or documents incorporated herein by reference, shall be deemed to contain the entire agreement between Buyer and Seller and to constitute the complete and exclusive expression of the terms of the agreement, all prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter hereof being merged herein.

29. **CLAIMS:** Seller agrees that any and all of its claims arising from this Purchase Order are subject to any applicable terms and conditions governing claims in the Buyer's contract documents with its customer, and that it shall not be entitled to recover any damages from Buyer on account of claims for additional compensation, changes, delays, hindrances, interferences, lost productivity, or other impact damages of whatever kind or description unless and until Buyer recovers and collects such damages from Buyer's customer. Such recovery and collection from Buyer's customer is an absolute condition precedent to Seller's right of recovery from Buyer. Buyer shall act as a conduit for Seller's claims, and Seller shall be

obligated to compensate Buyer for all costs and expenses, including legal and consulting fees and administrative expenses, that Buyer incurs to present Seller's claims to the Buyer's customer for consideration or payment or to arbitrate, mediate, or litigate such claims. Seller shall furnish all required testimony and documentation to support its claims. Buyer assumes no fiduciary responsibility for prosecution and recovery on Seller's behalf. In the event that Buyer recovers and collects damages from Buyer's customer on account of Seller's claims through negotiation, litigation, mediation, or arbitration, then Buyer shall tender to Seller the amount actually recovered and collected less the cost of prosecution and administration, and Seller shall accept that amount as payment in full for its claims and damages releasing Buyer from any additional liability or damages on the claims. If the claim is denied or the amount claimed or recovered is not collected, the Seller shall release Buyer from any and all liability for the claims and damages.

30. DISPUTES: At the option of Buyer, any and all claims, disputes, controversies, demands, and causes of action of whatever nature, kind or description arising from or relating to this Purchase Order, including without limitation contract, equity, tort or legal claims, and further including without limitation claims relating to rights of payment or interpretations hereof, shall be submitted to mandatory and binding arbitration in the Cleveland Tribunal of the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration

Association. The decision and Award of the Arbitrator(s) shall be final and binding on Buyer and Seller, and the decision and Award may be reduced to judgment and enforced in any Court of competent jurisdiction. This agreement to arbitrate shall be specifically enforceable under the Ohio Arbitration Act and the Federal Arbitration Act. The arbitrator(s) shall decide any issues relating to waiver of rights or timeliness of claims.

31. LIEN WAIVER: For good and valuable consideration, including the negotiated price for the merchandise or services under this Purchase Order, Seller unconditionally waives and releases any and all mechanics' lien rights or claims of lien rights against the property or project or Buyer, or any and all attested account rights. Seller agrees not to file any mechanics' liens or attested accounts to secure payment under this Purchase Order. Seller further agrees that any such lien shall be void and unenforceable and shall constitute a substantial and material breach of this Purchase Order. Buyer shall be entitled to set off against any sums due or to become due Seller under this Purchase Order an amount equal to one-and-a-half times the amount of the lien claim of Seller or any of Seller's lower tier subcontractors, suppliers, vendors and/or laborers. Buyer shall be entitled to recover from Seller the attorneys' fees, bond premiums, and expenses that Buyer incurs to defend and/or discharge any such mechanics' lien or attested account claim.