



**Purchase Order And Conditions**

1. Buyer's purchase of products (the "Goods") is conditioned upon these terms and conditions, which together with the terms on the face of this Purchase Order (the "P.O.") constitute the entire agreement between Buyer and Seller. Any conflicting provisions set forth in any other communications submitted to Buyer are objected to, and are deemed proposals for modification and do not become part of the contract of sale between Buyer and Seller unless expressly and separately agreed to in writing by Buyer. Seller's delivery of any Goods or services under this P.O. constitutes Seller's acceptance of this P.O. in strict accordance with all of its terms and conditions.

2. All Goods shall be shipped FOB Destination at the destination directed by Buyer. Time is of the essence. Seller shall provide all Goods in a timely fashion in accordance with the requirements for delivery stated in the P.O. Seller assumes risk of loss of any Goods sold under this P.O. until the time of actual receipt of the Goods by Buyer at the destination. Seller shall fully insure shipped Goods. Buyer shall take and assume legal title to the Goods and risk of loss on delivery at the FOB destination. Seller shall mark the number of the container and shall enclose a packing slip with the P.O. in an envelope on each container.

3. Seller hereby provides all of the warranties, as described in detail in Exhibit A.

4. Buyer will receive all Goods subject to its inspection and acceptance, and subject to its right to reject and return, at Seller's expense, Goods which fail to strictly conform to the requirements of this P.O. Seller shall be responsible to Buyer for all costs and expense that Buyer incurs, including reasonable attorneys fees, as the result of Seller's failure to provide conformance with the requirements of this P.O.

5. Payment: Seller shall invoice in accordance with the terms stated in the P.O. Seller's invoices shall be accompanied by copies of the shipping documents, by lien waiver documents requested by Buyer in order for Buyer to secure payment from the Owner for Seller's Goods. **The receipt by Buyer of payment from the Owner shall be a condition precedent to Seller's right to receive payment for the Goods.**

6. Third Party Claims: Seller agrees to hold harmless, indemnify, and defend Buyer from and against any liability, loss, damage, cost or expense (including attorneys fee) suffered from any claim, demand, actions, suit or cause of action made against it due to Seller's negligent or willful actions and/or Seller's failure to provide Goods in conformance with the requirements of this P.O.

7. Seller waives all claims against Buyer for consequential damages.

8. Dispute Resolution: The Buyer and Seller agree to the dispute resolution provisions stated in the attached Exhibit B.

9. Insurance: Seller shall provide the insurance described in the attached Exhibit C which prescribes project specific insurance terms required by the Owner unless Buyer varies such terms and conditions. If no Exhibit C is attached, then Seller shall, at its expense, maintain at all times: (a) Workers Compensation Insurance in statutory limit; (b) Commercial General Liability Insurance of at least \$500,000; (c) Commercial General Liability Insurance of at least \$1,000,000 per occurrence; (d) Automobile Liability Insurance of at least \$1,000,000 per occurrence; (e) Umbrella (Excess) Liability Insurance with at least a \$1,000,000 General Annual Aggregate. Seller shall provide Coil Construction, Inc. with a certificate of insurance naming Coil Construction, Inc. as an additional insured, providing for a waiver of subrogation, and providing for a 30-day written notice of cancellation to Coil Construction, Inc.

10. Changes: Buyer may make changes to this P.O., including changes to quantities, specifications, and/or scheduling. Such changes shall be stated in writing and delivered to the Seller. Seller shall proceed with any such changes, and shall be entitled to an equitable adjustment to the price and time of delivery with respect to such changes. Seller shall submit a written proposal to Buyer in writing of any proposed equitable adjustment within ten days of receipt of Buyer's change direction.

11. Claims: All claims by Seller for an increase in the Contract Price or the Contract Time shall be made in writing to the Buyer within seven (7) Calendar Days after the giving rise to such claim. Compliance by the Seller with this provision is essential in order for Buyer to make any related claim to the Owner in a timely fashion. If the Seller fails to present a claim in accordance with this paragraph, then the claim shall be deemed to be waived.

12. Termination: Buyer may terminate this P.O. for convenience at any time, in which case Seller shall be entitled to receive as Seller's sole and exclusive remedy Seller's reasonable costs in performing its obligations pursuant to this P.O. prior to receipt of the termination notice, plus a mark-up of ten percent, less any amounts previously paid by Buyer.

13. Upon request of the Buyer, the Seller shall provide UCC-1 statements and/or bills of sale and/or bailment agreements as Buyer may reasonably request.

14. Submittals: Shop Drawings, Product Data, Samples and all other submittals reasonably required and requested by the Buyer shall be furnished by the Seller to the Buyer within the time after requested by Buyer, in such format and in such quantity as may be reasonably prescribed by the Buyer.

15. Assignment: Neither the contract of sale nor the obligations thereunder may be assigned or transferred by Seller unless separately agreed to by Buyer, in writing. Any assignment in violation of this provision shall be void.

16. **Seller warrants that the price for the Goods includes all packing, inspection, insurance and shipping costs, and all federal, state and local taxes added, transfer or other taxes assessable against the production, sale, shipment or use of the Goods.** **Sales Tax Exemption:** To the extent that the Goods are exempt from sales, consumer, use and similar taxes, the Owner shall provide to the Buyer, who will in turn provide same to the Seller, a Certificate of Exemption or other document which shall thereafter utilize such exemption or notice to the maximum extent permissible by its terms. If the Contract Price established in the Agreement does not take into account such exemption which is provided after execution of this Agreement, an equitable adjustment of the Contract Price shall be made to reflect the application of such a sales tax exemption.

17. The Goods shall include from Seller perpetual, irrevocable, royalty-free licenses to practice and use any intellectual property, including, without limitation, any software. At the request of Buyer, Seller shall provide such documentation as reasonably required by Owner to evidence such licenses. This excludes any software that is licensed directly from third parties.

18. Safety: To the extent that Seller performs any services related to this Agreement on site at the Owner's facility, the Seller shall (a) at all times comply with all applicable regulations, codes, and standards, and take the necessary precautions to perform its work in a safe manner, and (b) comply with Buyer's Site Specific Safety Plan (if any) issued for the Project, a copy of which shall be provided to Seller at the Project site for Seller's review in Buyer's trailer or office at the Project site. Seller agrees to inspections by Buyer to determine compliance with safety, health, and environmental standards. Seller acknowledges that Buyer's right to inspect shall not in any way relieve Seller of its obligations. If at any time, Seller violates OSHA standards or in the opinion of Buyer is engaged in an unsafe manner or otherwise not in compliance with Buyer's Safety Program, Buyer may either require Seller to immediately cease work until the unsafe practice is corrected or require Seller to take the required safety measures at Seller's cost.

For Exhibit A, B & C, please see Coil Construction's website at [Coilconstruction.com](http://Coilconstruction.com).



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