

CONRAD INDUSTRIES, INC.

PURCHASE ORDER TERMS AND CONDITIONS

1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- 1.1 This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.
- 1.2 Seller's acknowledgment, acceptance of payment, or commencement of performance shall constitute Seller's unqualified acceptance of this Contract.
- 1.3 Unless expressly accepted in writing by Buyer, additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgement are objected to by Buyer and have no effect.
- 1.4 The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope of the intent of the provisions of this Contract.
- 1.5 Seller agrees that upon the request of Buyer, it will negotiate in good faith with Buyer relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as Buyer may reasonably deem necessary.
- 1.6 This Contract may be modified only by a written document signed by duly authorized representatives of Buyer and Seller.

2. DEFINITIONS

- 2.1 BUYER means Conrad Industries, Inc. including its subsidiaries or divisions as identified on the face of the ORDER.
- 2.2 BUYER'S AUTHORIZED PURCHASING REPRESENTATIVE means the person authorized by Buyer to administer and/or execute the ORDER.
- 2.3 CONTRACT means the instrument of contracting and includes the ORDER, these Purchase Order Terms and Conditions, all referenced documents, exhibits and attachments.
- 2.4 DATA means all financial/business information, designs, dimensions, specifications, drawings, patterns, know how, or other information concerning methods, manufacturing processes, equipment, gauges and tools used in the design and manufacture of Products or to perform Work. Data may be recorded in a written or printed document, computer or electronically stored, software, or any other tangible form of expression.
- 2.5 DAYS means calendar days.

- 2.6 DELIVERY DATE means the date specified by Buyer in an Order by which goods shall be delivered or services shall be completed by Seller.
- 2.7 DISPUTE means a disagreement between Buyer and Seller that cannot be resolved.
- 2.8 ORDER means the Buyer's purchase order issued to Seller.
- 2.9 PARTIES means Buyer and Seller collectively.
- 2.10 PRODUCTS means those goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies and any incidental services described in the ORDER.
- 2.11 PROPRIETARY INFORMATION means all Data or other information that is identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking or stamp identifying the Data as proprietary to the party disclosing the information, and includes any information marked with a restrictive legend.
- 2.12 SELLER means the party identified on the Order and with whom Buyer is contracting.
- 2.13 WORK means all required labor, articles, materials, supplies, goods and services constituting the subject matter of this Contract.

3. ORDER OF PRECEDENCE

- 3.1 In the event of any inconsistency between any parts of this Contract, the inconsistency shall be resolved by giving precedence in the following order:
- A. Change Order Document
 - B. Purchase Order Document
 - C. Purchase Order Terms and Conditions
 - D. Master Service Agreement (if applicable)
 - E. Statement of Work
 - F. Specifications
 - G. Drawings

4. APPLICABLE LAWS/COMPLIANCE WITH LAWS

- 4.1 This Contract and any matter arising out of or related to this Contract shall be governed by the laws of the State of Louisiana, without regard to its conflicts of law provisions.
- 4.2 Seller, in the performance of this Contract, represents and warrants that it is in compliance with and all Products or Work supplied hereunder have been produced or provided in compliance with the applicable provisions of all federal, state, or local laws or ordinances and all related lawful orders, rules and regulations. Seller shall comply with any provisions, representations, or agreements, or contractual clauses required to be included or incorporated by reference or operation of law in any Order. Seller shall be required to obtain and pay for any license, permit, inspection or listing by any public body or certification organization required in connection with the manufacture, performance, completion, or delivery of any Product or Work.

5. CHANGES

- 5.1 Buyer's Authorized Purchasing Representative may at any time, by written order, make changes within the general scope of this Contract to (A) drawings, designs, specifications, planning, and/or other technical documents; (B) method of shipment, packaging, or packing; (C) place of delivery; (D) reasonable adjustments in quantities or delivery schedules or both; (E) place of inspection; and (F) place of acceptance.
- 5.2 If any such change causes an increase or decrease in the cost or time required to perform this Contract, Buyer shall make an equitable adjustment in the price and/or delivery schedule, and modify this Contract accordingly.
- 5.3 Any claim by Seller for adjustment under this Section 5 must be in a detailed writing and delivered to Buyer within five (5) days after Seller's receipt of notification of change. Any change will be authorized by a duly executed amendment to this Order.
- 5.4 Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse Seller from proceeding without delay in the performance of this Contract as changed.

6. CONTRACT DIRECTION

- 6.1 Only the Buyer's Authorized Purchasing Representative has authority on behalf of Buyer to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties.
- 6.2 Buyer's engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this contract and shall not be the basis for equitable adjustment.
- 6.3 Except as otherwise provided herein, all notices to be furnished by Seller shall be in writing and sent to Buyer's Authorized Purchasing Representative.

7. PACKING AND SHIPMENT

- 7.1 Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- 7.2 All deliveries shall be strictly in accordance with the applicable quantities and Delivery Date(s) set forth in the Order. Buyer reserves the right to return overshipments and early shipments at Seller's expense. Seller shall be liable for all storage/handling charges incurred as a result of overshipments and early shipments.
- 7.3 A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information,

including the Buyer Order number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include Seller's Order number.

- 7.4 Unless otherwise specified, delivery shall be FOB Buyer's facility as indicated on the Order, with freight paid by Seller.

8. TIMELY PERFORMANCE

- 8.1 Buyer's production schedules and warranties to its customers are dependent upon the agreement that delivery of the Work will occur by the Delivery Date. Time is of the essence, and Seller shall be responsible for all damages of any kind incurred or suffered by Buyer which were caused by any delay of Seller in meeting the Delivery Date.

- 8.2 If Seller becomes aware of difficulty in performing the Work or delivering the Work by the Delivery Date, Seller shall timely notify Buyer, in writing, as soon as Seller is aware that such difficulty exists. This notification shall include (a) a description of the difficulty (b) its occurrence date; (c) its expected duration, and (d) its expected effect on the Delivery Date, but such notification shall not change the Delivery Date.

- 8.3 Excusable Delays.

8.3.1 Seller shall not be in default because of any failure to perform the Work if the failure arises from causes beyond the control and without the fault or negligence of the Seller. Examples of these causes are (a) acts of God or of the public enemy, (b) acts of the Government in either its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics and pandemics, (f) quarantine restrictions, (g) strikes, (h) freight embargoes, and (i) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller.

- 8.3.2 Within seven (7) days of first knowledge of the Seller that any Delivery Date will be affected by any event of Excusable Delay, Seller shall notify Buyer in writing, and shall furnish an estimate of the extent of the delay. Seller shall include with that notice (a) a description of the event, (b) its occurrence date, (c) its expected duration, and (d) its expected effect on the Delivery Date. Seller shall inform Buyer in writing of the end of an event of Excusable Delay within ten (10) days of its cessation and include an estimate of the delay in the Delivery Date, if any, caused by that event. Upon receipt of Seller's notice of an event of Excusable Delay, Buyer shall, within seven (7) days, either acknowledge the same in writing and indicate agreement if such development is to be treated as an event of Excusable Delay, or state any objections, and the reasons therefor, to acceptance of this development as an event of Excusable Delay. If the parties cannot come to an agreement on whether an event of Excusable Delay occurred, the matter shall be resolved pursuant to the Disputes section of this Contract. If and when a Delivery Date is delayed by an event of Excusable Delay, the Delivery Date shall be adjusted by a period equal to the period specifically and exclusively resulting from the Excusable Delay, subject to the rights of Buyer under the Termination clause of this Contract.

9. WORK ON BUYER'S PREMISES

- 9.1 In the event Seller is required to enter Buyer's facilities to perform Work, Seller agrees that it will enter into a Master Service Agreement with Buyer and provide indemnity and insurance in accordance therewith.

10. INVOICING AND PAYMENT

- 10.1 Unless otherwise provided, no invoice shall be issued and no payment will be made prior to physical delivery of the Work.

- 10.2 Seller's invoices shall contain the following information:

- a. Buyer's Order number;
- b. Invoice number;
- c. Invoice date;
- d. Seller's name and address (must agree to Order);
- e. Line item indicating service/goods description exactly as indicated on Buyer's Order and must reference appropriate Order line item number;
- f. Quantity, unit or measure and unit price exactly as indicated on Buyer's Order;
- g. Date(s) of service or delivery;
- h. Additional miscellaneous charges (i.e., sales tax, freight) MUST be separate items on the invoice;
- i. Total invoice value;
- j. Buyer's Customer Project number.

- 10.3 If Seller's "remit to" address is different than the address indicated on the Order, the invoice must clearly identify the "remit to" address.

- 10.4 In the event a shipment is made at Buyer's expense (i.e., FOB Origin), Seller shall include a copy of the freight bill (which shall include the weight of items shipped) with each invoice.

- 10.5 Buyer reserves the right to return invoices failing to comply with these instructions for resubmittal of a correct invoice.

- 10.6 Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (a) Buyer's receipt of Seller's proper invoice; (b) scheduled Date of the Work; or (c) actual delivery date of the Work.

- 10.7 Payment shall have deemed to have been made as of the date of mailing Buyer's payment or electronic funds transfer.

- 10.8 Any amounts owing to Buyer by Seller may be set off against amounts otherwise due to Seller under an Order. Such amounts may be applied to future purchases or returned in full to Buyer, subject to Buyer's discretion.

11. ASSIGNMENT

11.1 Seller may not assign this Contract, in whole or in part, or the right to any payment due hereunder, without Buyer's prior written consent. Any unauthorized assignment of this Order, by operation of laws or otherwise, will be void. This Contract will insure to the benefit of each party's successors and authorized assigns. Without limiting the foregoing, Seller may use subcontractors to fulfill its obligations hereunder; provided, however that (a) Seller will remain liable for the performance of all of its obligations under this Contract, even if subcontracted, and (b) Seller will be as liable for the acts or omissions of Seller's subcontractors, including for indemnification purposes, as it would its own acts or omissions.

12. RISK OF LOSS

12.1 With regard to the Work provided by Seller, delivery shall not be deemed complete until the Work has actually been received by Buyer at its facility. The risk of loss shall not pass to Buyer until delivery of the Products or Work to the location designated on the face of this Order and acceptance by Buyer.

12.2 If Buyer rightfully rejects the Work or Products, receives a non-conforming tender, or revokes its acceptance, risk of loss and title shall be deemed to have remained with Seller.

If the Products ordered are destroyed or substantially damaged before delivery to Buyer at its facility, Buyer may, at its option, terminate the Order or require delivery of substitute Products of equal quantity and quality. Such delivery will be made as soon as commercially practicable at no additional cost to Buyer. If loss of Products is partial, Buyer may require delivery of the Products not destroyed.

13. WARRANTY

13.1 Seller represents and warrants that all Products, including replacement Products furnished by Seller will:

- a. Be new;
- b. Conform to all applicable specifications, drawings, samples and descriptions;
- c. Merchantable;
- d. Free and clear of all liens, claims or encumbrances of every kind;
- e. Fit for the particular purpose(s) for which such Products are ordinarily employed and any other purpose(s) specified by Buyer;
- f. Be free from defects in material, design and workmanship.

13.2 Seller represents, warrants and agrees that all Services will be performed in a professional and workmanlike manner consistent with best industry practices.

13.3 Seller represents, warrants, and agrees that the Products and/or Services provided pursuant to this Contract do not and will not violate or misappropriate any third-party property right, including any patent, copyright, trademark, trade secret, right of publicity, right of privacy or any other.

- 13.4 The foregoing express warranties are in addition to, and not in limitation of, any warranty customarily made by Seller for its Products, any other warranty made by Seller to Buyer in connection with such Products, and any implied warranties of any kind or nature, and will be construed as conditions as well as warranties. Any additional warranties made by Seller to Buyer will be incorporated into this Contract by reference.
- 13.5 Seller's warranties for each Product and each Service will extend for a period of twelve (12) months or such longer period as may be offered by Seller or Seller's suppliers, after the Product or Service is accepted by Buyer and successfully used for its intended purpose, whichever is later, except that Seller's warranty under 13.3 (noninfringement) will extend in perpetuity. If Seller or Seller's suppliers provide warranties for longer than twelve (12) months, the longer period of such warranties will be incorporated into the Contract by reference.
- 13.6 Notice of any defect may be given to Seller at any time within the warranty period except that notice of latent defect or one concealed by fraud or gross negligence may be given at any time. Seller will, at Buyer's option, either repair or replace defective Products and/or re-perform defective Services, at Seller's sole expense. Seller will also repair or replace any damage to Buyer's or any third-party real or personal property caused by defects in the Products. If any Products are returned to Seller for correction or replacement pursuant to this Article, Seller shall bear the transportation costs to the Seller's plant and return to Buyer.
- 13.7 If Seller fails to proceed with reasonable promptness to replace or correct defective or nonconforming Work, Buyer may replace, correct or reprocur such defective or nonconforming Work and charge to Seller any increased cost or may offset such increased cost in accordance with Article 10.8 herein.
- 13.8 The rights and remedies of Buyer provided in this Article are in addition to and do not limit any rights afforded to the Buyer by any other article of this Contract.
- 13.9 The warranties provided herein will also apply to and be for the benefit of all of (a) Buyer's parent and affiliated companies, as well as all directors, employees and agents of Buyer and such entities; and (b) if Buyer is not the ultimate consumer of Products, or if Products are incorporated into products Buyer sells to its own customer(s), all warranties available to Buyer under this Contract will be deemed made and available to the ultimate consumer of the Products.

14. ADVERTISING

- 14.1 Seller may make no advertising or publicity statements in any medium having or containing any reference to Buyer, Buyer's trademarks or logos, or any of its personnel, including on any customer lists Seller uses for advertising and promotional purposes, without Buyer's prior written consent in each instance. Unauthorized use by seller may result in penalties, legal matters, to include contract termination without penalty to Buyer.

15. CONFIDENTIALITY

- 15.1 Seller acknowledges that the terms of this Contract are confidential and will not disclose the terms of this Contract to any third party, except to Seller's legal and financial advisors who are obligated to keep such information confidential and as necessary for Seller to perform Seller's obligations under this Contract, and as otherwise specifically agree in writing by Buyer.
- 15.2 Seller further acknowledges that all information disclosed to Seller by Buyer and/or information developed in the course of Seller's performance under this Contract, by either party, alone or with others (together with the terms of this Agreement, the "Confidential Information"), is Buyer's exclusive property. Seller may use the Confidential Information only as necessary to perform Seller's obligations under this Contract, and Seller may not disclose the Confidential Information to any third party, except in those cases set forth above regarding the terms of this Contract.
- 15.3 Confidential Information shall not include information that (a) is or becomes known to the general public, other than as a result of Seller's breach of any obligation hereunder; or (b) was, at the time of receipt by Seller, otherwise known to Seller without restriction as to use or disclosure; or (c) becomes known to Seller from a source other than Buyer without breach of this Contract by Seller; or (d) is developed independently by Seller and without reliance upon Confidential Information disclosed hereunder.
- 15.4 It will not be a breach of this Article if Seller discloses Confidential Information to the extent required by applicable Laws, including a subpoena or similar document issued by any court of competent jurisdiction, provided that Seller provides Buyer with advance written notice of such required disclosure sufficiently in advance to permit Buyer to contest or seek to limit the disclosure or seek a protective order or similar instrument, and Seller cooperates with Buyer in such efforts.

16. HAZARDOUS MATERIALS AND SAFETY DATA

- 16.1 Seller agrees to supply to Buyer, as a component of the Work ordered, all Material Safety Data Sheets (MSDS), in a format and with sufficient content to meet all OSHA requirements, which pertain to all portions and components of the goods delivered pursuant to any Order.
- 16.2 Within fifteen (15) days of the placement of an Order, Seller agrees to furnish to Buyer a description of any and all hazardous materials and volatile organic compounds which will form any portion of the Work to be furnished. "Hazardous Materials" means any explosives, radioactive materials, hazardous wastes, or hazardous substances, including without limitation, asbestos-containing materials, PCBs, CFCs, or substances defined as "hazardous substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9657; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901-6987; or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials, waste, or substances now or at any time hereafter in effect.

17. INDEMNIFICATION

- 17.1 Seller agrees to protect, indemnify, defend and hold harmless Buyer, its partners, officers, agents, employees, parent companies, subsidiaries, affiliates, interrelated companies, customers, indemnitees, successors, assigns, contractors and subcontractors (hereinafter collectively referred to as "Buyer Group") from and against any and all liability, claims, suits, liens, causes of action of every kind and character and any litigation expenses, including costs and attorneys' fees, settlements, judgments, fines and penalties (including punitive damages) for bodily injury, personal injury, emotional or psychological injury, or death brought by any member of Seller Group against Buyer Group, which claims are alleged to be or in fact are related to, incident to, arising out of, in connection with, or resulting from, either directly or indirectly, the Work and/or the acts, omissions and/or presence of Seller, Seller's employees, agents or invitees, and/or Seller's subcontractors and their employees agents or invitees. **Seller agrees to defend and indemnify Buyer Group regardless of whether such claims, demands or suits are occasioned, brought about, or caused in whole or in part by the negligence, whether sole, joint or concurrent, or strict liability of Buyer Group, or by any defect in the property or unseaworthiness of any vessel moored or drydocked on or adjacent to the Premises, regardless of whether such negligence, or strict liability, defect, or unseaworthiness be active or passive, primary or secondary or exist at the time of this Agreement or arises later.** Seller also agrees to indemnify the Buyer Group for all costs, expenses and attorneys' fees expended by Buyer Group in the enforcement of this Agreement. The provisions of this Article shall survive any termination or expiration of this Agreement and completion of Seller's Work and shall protect the Buyer Group whether the loss or damage is suffered away from the Seller's or Buyer's premises or after the Work has ended. The procurement of insurance required under this Agreement shall not in any way reduce or lessen Seller's and its subcontractor's defense and indemnity obligations found in this Article.
- 17.2 Buyer agrees to protect, indemnify, defend and hold harmless Seller, its parent, officers, agents, employees, officers, parent companies, subsidiaries, affiliates, interrelated companies, successors, assigns, contractors and subcontractors (hereinafter and before collectively referred to as "Seller Group") from and against any and all liability, claims, suits, liens, causes of action of every kind and character and any litigation expenses, including costs and attorneys' fees, settlements, judgments, fines and penalties (including punitive damages) for bodily injury, personal injury, emotional or psychological injury, or death brought by any member of Buyer Group against Seller Group, which claims are alleged to be or in fact are related to, incident to, arising out of, in connection with, or resulting from, either directly or indirectly, the Work and/or the acts, omissions and/or presence of Buyer Group. **Buyer agrees to defend and indemnify Seller Group regardless of whether such claims, demands or suits are occasioned, brought about, or caused in whole or in part by the negligence, whether sole, joint or concurrent, or strict liability of Seller Group, or by any defect in the property or unseaworthiness of any vessel moored or drydocked on or adjacent to the Premises, regardless of whether such negligence, or strict liability, defect, or unseaworthiness be active or passive, primary or secondary or exist at the time of this Agreement or arises later.** Buyer also agrees to indemnify the Seller Group for all costs, expenses and attorneys' fees expended by Seller Group in the enforcement of this Agreement. The provisions of this Article shall survive any

termination or expiration of this Agreement and completion of Seller's Work and shall protect the Seller Group whether the loss or damage is suffered away from the Buyer's or Seller's premises or after the Work has ended. The procurement of insurance required under this Agreement shall not in any way reduce or lessen Buyer's and its subcontractor's defense and indemnity obligations found in this Article.

17.3 With respect to any third-party claims asserted against Seller Group or Buyer Group arising out of or in connection with the performance of this Contract, each party agrees to indemnify, defend, and hold harmless the other party to the extent attributable to the negligence of the indemnifying party group.

17.4 Seller shall discharge at once or bond or otherwise secure against all liens and attachments which are filed in connection with any Work or Access and shall indemnify and save Buyer and the owners of vessels on the Premises and/or the Premises itself harmless from and against any and all loss, damage, injury, liability and costs, including attorney's fees and claims thereof resulting directly or indirectly from such liens and attachments.

18. INSURANCE

18.1 In the event Seller is required to enter Buyer's facilities to perform Work, Seller agrees to carry the following insurance throughout the entire period of this Contract for the benefit of Buyer, its customers and persons for whom Buyer and its contractors are performing work or furnishing services for any reason at any time, and the respective officers, directors, employees, contractors, agents, and parent, subsidiary and affiliated companies of all of the foregoing (collectively the "Buyer Group"):

18.1.1 Worker's Compensation insurance that complies with the laws of every state in which Work is performed and which includes an endorsement providing coverage required by the U.S. Longshoremen's and Harbor Workers' Compensation Act, as amended. Such insurance shall be endorsed as primary to and non-contributory with any insurance carried by Buyer Group, shall waive underwriters' rights of subrogation against Buyer Group, and shall be endorsed to treat an "*in rem*" claim as a claim against the employer. Such insurance shall also contain an alternate/statutory employer endorsement naming Buyer Group as alternate and statutory employers and providing coverage to Buyer Group as alternate and/or statutory employers.

18.1.2 Employer's Liability insurance with limits of not less than \$1,000,000 each accident, each employee. Such insurance shall be endorsed to provide maritime liability coverage including, but not limited to, coverage for claims under the Jones Act, General Maritime Law, Death on the High Seas Act, Outer Continental Shelf Lands Act and state law incorporated thereby. Such insurance shall name Buyer Group as additional insureds, shall be endorsed as primary to and non-contributory with any insurance carried by Buyer Group, shall be endorsed to treat an "*in rem*" claim as a claim against the employer, and shall waive underwriters' rights of subrogation against Buyer Group.

18.1.3 Business Automobile Liability insurance with combined bodily injury and property limits of not less than \$1,000,000 each occurrence, including coverage

for all owned, non-owned and hired vehicles for operations conducted by Seller in all jurisdictions, both foreign and domestic. Such insurance shall name Buyer Group as additional insureds, shall be endorsed as primary to and non-contributory with any insurance carried by Buyer Group and shall waive underwriters' rights of subrogation against Buyer Group.

18.1.4 Comprehensive General Liability insurance under the occurrence form with limits of not less than \$1,000,000 combined single limits, providing coverage for, among other things, bodily injury, illness, and property damage. Such insurance shall delete all watercraft, Insured's Work/Product, Impaired Property and Pollution exclusions, and shall be endorsed to provide products/completed operations coverage, ship repairers' coverage, "*in rem*" coverage and contractual liability coverage (including coverage for the defense and indemnity obligations undertaken in Article 17 hereof). Such insurance shall also name Buyer Group as additional insureds, shall be endorsed as primary to and non-contributory with any insurance carried by Buyer Group and shall waive underwriters' rights of subrogation against Buyer Group.

18.1.5 Hull Insurance - If Seller rents, leases or utilizes vessels, barges or other marine equipment and/or marine services hereunder, Seller, in addition to all other insurance coverages required herein, shall carry Hull insurance on the vessels, barges and other marine equipment to the full value thereof, Protection & Indemnity insurance with primary limits of \$1,000,000 per occurrence, tower's legal liability for tugboats utilizing primary limits of \$1,000,000 per occurrence, and excess liability coverage in the amount of \$10,000,000 over and above the P&I and tower's liability primary limits. Such insurance shall be endorsed to waive all "owner" and "as owner of" clauses and any other clauses that purport to limit insurers' coverage obligation to the value of the vessel. Such insurance shall also name Buyer Group as additional insureds, shall be endorsed as primary and non-contributory with any insurance carried by Buyer Group and shall waive underwriters' rights of subrogation against Buyer Group.

18.1.6 Excess Liability insurance coverage with limits of at least \$5,000,000 in excess of the coverages set out in this Article.

18.2 All insurance required under this Contract shall be carried by Seller with insurance companies rated not less than Best's "A-VII" or which are otherwise acceptable to Buyer per written confirmation. Seller agrees to furnish Buyer with certificates of insurance evidencing the above coverage. All of the policies referenced in this Contract shall provide at least thirty (30) days written notice of cancellation of policy or of any other material change that would reduce the insurance or liability of the respective policies. All policies shall be endorsed and/or written to afford the Buyer Group no less coverage than that provided to the named insured, and shall not limit coverage based on the completion of Seller's operations or the existence of Buyer Group's fault or strict liability. If Seller employs any subcontractors, then Seller will require that Seller's subcontractors obtain the same insurance policies and conditions in favor of Buyer Group.

18.3 If any of the policies of insurance required above fail to afford coverage to the Buyer Group for any reason, Seller shall assume the role of insurer.

18.4 Seller's compliance, or its failure to comply, with the insurance provisions of this Contract shall not relieve or limit its obligation to indemnify or hold the Buyer Group harmless where and to the extent so required by the provisions of this Contract.

19. DISPUTES

19.1 Any dispute that may arise under or in connection with this Contract or any Order with respect to the rights, duties or obligations of the parties hereto shall be submitted in writing for resolution to Buyer's Authorized Purchase Representative. The parties will attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable, and will involve the participation of senior executive management.

19.2 If a dispute cannot be resolved to both parties' mutual satisfaction, after good faith negotiations, within ninety (90) calendar days from the date the written claim is received by Buyer's Authorized Purchase Representative, or such additional time as the parties may agree upon, in writing, either party may bring suit in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, or U.S. District Court for the Eastern District of Louisiana. Seller consents to personal jurisdiction for this purpose.

19.3 Pending any prosecution, appeal, or final decision referred to in this article, or the settlement of any dispute arising under this Contract or any Order, Seller shall proceed diligently, as directed by Buyer, with the performance of the Contract or Order.

20. TERMINATION FOR DEFAULT

20.1 The following events shall constitute events of default by Seller:

20.1.1 There is filed by or against Seller in any court a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Seller's property;

20.1.2 Seller makes an assignment for the benefit of creditors or petitions for or enters into an agreement or agreements with its creditors, and by reason of any of these events Seller's obligations under this Contract are assigned to or are to be performed by a person other than Seller;

20.1.3 Seller materially fails to execute or perform the Work in accordance with the Contract;

20.1.4 Seller materially disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Work;

20.1.5 Delay in the delivery of any Work for a period of fifteen (15) or more days, except for excusable delay as defined in Article 8.3 herein;

20.1.6 Seller fails to perform any other material provision of this Contract;

20.1.7 Seller is proposed for debarment or suspension, or is subject to a final decision for suspension or debarment from any federal agency or department for any reason.

- 20.2 If an event of default occurs, then Buyer, by giving written notice of any such event to Seller, in addition to and without prejudice to any other remedies it may have, may terminate this Contract and/or any Order and complete the Work as Buyer sees fit. Upon notification of Buyer's termination of this Contract or any Order, Seller shall promptly undertake, at its sole cost, to collect all documents, drawings, data and specifications in its possession and related to the Work, and shall provide these documents to Buyer no later than ten (10) days of Buyer's notice of default.
- 20.3 For any work completed at the time of default, the warranty provisions of this Contract shall be in full force and effect.
- 20.4 Buyer shall be obligated to pay to Seller for any Work performed or delivered through the date of notice of termination, less any amounts previously paid by Buyer for such Work. Seller shall be obligated to pay Buyer the costs necessary to complete the Work which are in excess of the Contract price.

21. TERMINATION FOR CONVENIENCE

- 21.1 Buyer reserves the right to terminate this Contract, or any order, for its convenience. Buyer shall terminate by delivering to Seller written notice of termination specifying the extent of the termination and the effective date.
- 21.2 In the event of such termination, Seller shall immediately stop all Work and shall immediately cause any and all of its suppliers and subcontractors to cease Work. Subject to the terms of this Contract, Seller shall be paid a percentage of the Contract price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges Seller can demonstrate to the satisfaction of Buyer using its standard record keeping system have resulted from the termination. Seller shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.
- 21.3 In no event shall Buyer be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. Seller's termination claim shall be submitted within ninety (90) days from the effective date of termination.
- 21.4 Seller shall continue all Work not terminated.

22. ACCESS TO BUYER'S FACILITY

- 22.1 Provided Seller has met the insurance requirements set forth in Article 18 herein, Seller may access, enter, board and/or utilize Buyer's Premises, which is defined as the premises of Buyer, its customers, or other third parties where Work is being performed.
- 22.2 Seller's access to the Premises is conditioned on Seller's agreement to and compliance with the following:

- 22.2.1 Seller agrees to use its vehicle(s) on the Premises at its own risk and agrees that Buyer will not be responsible for damage to Seller's vehicle(s) as the result of normal operations, such as blasting, painting, road oiling, etc.
- 22.2.2 Seller shall ensure that Seller personnel working on the Premises comply with any on-premises policies and: (a) do not bring weapons of any kind onto Premises; (b) do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on Premises; (c) do not possess hazardous materials of any kind on the Premises without Buyer's authorization; (d) remain in authorized areas only; (e) do not conduct any non-Buyer related business activities (such as interviews, hirings, dismissals or personal solicitations) on Premises; (f) do not send or receive non-Buyer related mail through Buyer's or third party's mail systems; (g) do not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on Premises without Buyer's written permission or as permitted by law; and (h) follow instruction from Buyer in the event of an actual or imminent safety or environmental hazard on Premises.
- 22.2.3 Seller, at its expense, shall keep and maintain equipment furnished by Buyer in good condition, and upon the termination of the use of such equipment, return the same to Buyer in as good condition as when received, subject, however to ordinary wear and tear. If possible and practical to do so, Seller shall examine, before using, all materials, equipment and supplies furnished by Buyer and will report to Buyer any defects therein in time to allow Buyer to replace same without delaying the Work.
- 22.2.4 Seller guarantees that all tools and equipment will be furnished, and all Work will be performed in strict accordance with all applicable federal, state and local laws, rules, regulations, orders and ordinances. In the event Seller's equipment, or use thereof, does not comply with the Federal Occupational Safety and Health Act (OSHA) standards and regulations, Seller shall be solely responsible for any fines or penalties that may be imposed. Seller is responsible for loss or damage to Seller's equipment.
- 22.2.5 Seller shall promptly notify Buyer and provide a report of any accidents or security incidents involving loss of or misuse or damage to Buyer, customer, or third party intellectual or physical assets, and all physical altercations, assaults, or harassment.
- 22.2.6 Seller shall conduct the Work in a manner that will prevent any pollution or other damage to the environment and shall observe and obey any and all applicable international, national, state and local environmental laws, rules, regulations, and any other applicable rules and standards issued for the protection of the environment. Seller shall be fully responsible for any and all losses, liabilities, claims, demands, debts, damages, fines, penalties, causes of action, suits, expenses and costs of any nature whatsoever (collectively "Losses") arising from or in any way related to any actual or threatened pollution, spills, contamination, discharge or other environmental damage caused directly or indirectly by the activity of Seller or its employees and agents in, on or around Buyer's premises. Seller shall indemnify and hold harmless Buyer Group from and against any and

all Losses directly or indirectly arising out of such threatened or actual pollution, spills, contamination, discharge or other environmental damages caused by the activity of Seller or its employees or agents in, on or around Buyer's premises.

22.2.7 All persons, property, and vehicles entering or leaving Premises are subject to search.

22.2.8 Seller shall ensure that Seller personnel: (a) do not remove Buyer, customer, or third party assets from Premises without Buyer authorization; (b) use Buyer, customer, or third party assets only for purposes of this Contract; (c) only connect with, interact with or use computer resources, networks, programs, tools or routines authorized by Buyer; and (d) do not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. Buyer may periodically audit Seller's data residing on Buyer, customer or third party assets on Premises.

22.2.9 Seller shall immediately report to Buyer all emergencies (e.g., medical, fire, spills or release of any hazardous material) and non-emergency incidents (e.g., job-related injuries or illnesses) affecting the Work. Seller shall provide Buyer with a copy of any reports of such incidents Seller makes to governmental authorities.

22.3 Buyer may, at its sole discretion, have Seller remove any specified employee of Seller from Premises and require that such employee not be reassigned to any Premises under this Contract.

22.4 Violation of this Article may result in termination of this Contract in addition to any other remedy available to Buyer at law or in equity. Seller shall reimburse Buyer, customer, or third party for any unauthorized use of Buyer, customer, or third party assets.

23. COMPLIANCE WITH LAWS/REGULATIONS

23.1 Seller shall comply with all international, national, state, provincial, district and local laws, rules, orders, statutes, ordinances and regulations of all governmental authorities (including agencies and commissions as applicable) ("Laws") applicable to and/or with jurisdiction over its performance hereunder and its business.

23.2 Without limiting the foregoing, if Seller (including, if applicable, any affiliate, subdivision or similar entity providing Products hereunder), is domiciled in the United States ("United States Seller"), Seller will comply with (a) Executive Order 11246, as amended, 38 USC 4212 on the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations at 41 CFR Part 60-1 through 60-60, 60-250, and 60-71, the Civil Rights Act of 1964, and all other Laws regarding wages, hours, materials, price regulations and renegotiation provisions, and other matters, whether or not specifically mentioned herein; (b) the Occupational Safety and Health Act of 1970 and all pertinent state occupational safety and health Laws such as "Right-to-Know" regulations.

23.3 Without limiting the foregoing, if Seller is not a United States Seller, Seller will comply with all applicable laws of all applicable jurisdictions regarding non-discrimination in hiring and employment opportunities, workplace safety and occupational health, wages,

hours, materials, price regulations and renegotiation and all disclosures (including by posting) required under such Laws to notify employees and applicants for employment of their rights and Seller's obligations.

23.4 Equal Employment Opportunity Certification: United States Sellers. Unless exempted by Presidential Executive Order 11246 and applicable regulations, each United States Seller:

- a. Certifies that (i) it does not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other basis prohibited by Laws; and (ii) it will take, before providing Products hereunder, or has taken, affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such affirmative action will include, but not be limited to the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Will post in conspicuous places, available to employees and applicants for employment, notices to be provided under applicable Laws, setting forth the provisions of this nondiscrimination clause.
- c. If requested, will execute Buyer's Equal Employment Opportunity Agreement and Certification.

24. INTELLECTUAL PROPERTY

24.1 **Seller warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or in any foreign country. Seller shall defend, indemnify and hold harmless Buyer, its officers, directors, employees, consultants, agents, affiliates, subsidiaries and parent companies and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.**

24.2 Seller agrees that Buyer shall have a limited, irrevocable, nonexclusive, world-wide, royalty-free license to make use of the Work performed or delivered under the Contract in the performance of its contract obligations with its customer.

25. GOVERNING LAW/JURISDICTION

25.1 This Contract will be construed under and governed by the substantive laws of the State of Louisiana, as if entirely made therein, without regard to its conflicts of laws provisions. Any claim arising under or in connection with this Contract between the parties, including as to its existence, breach, validity, and/or Products or Services or Work supplied, will be adjudicated exclusively in the courts of the State of Louisiana. The Parties hereto

hereby irrevocably consent that any legal action or proceeding against either of them under, arising out of or in any manner relating to this Agreement must be brought in either the 24th Judicial District Court of the State of Louisiana, Parish of Jefferson or in the United States District Court for the Eastern District of Louisiana, located in New Orleans, Louisiana (the 24th Judicial District Court and the United States District Court for the Eastern District Court of Louisiana are hereinafter collectively referred to as the "Louisiana Courts"). The Parties hereto, by execution of this Contract, expressly and irrevocably assent and submit to the personal jurisdiction of the Louisiana Courts in any such action or proceeding. The Parties hereto further irrevocably consent to the service of any complaint, summons, notice or other process relating to any such action or proceeding by delivery thereof to them by hand or by mail. The Parties hereto hereby expressly and irrevocably waive any claim or defense in any such action or proceeding based on any alleged lack of personal jurisdiction, improper venue or Forum Non Conveniens or any similar basis. The Parties hereto shall not be entitled in any such action or proceeding to assert any defense given or allowed under the laws of any state other than the State of Louisiana, unless such defense is also given or allowed by the laws of the State of Louisiana. The institution by any of the Parties hereto of an action in any court other than a Louisiana Court will be an express breach of this Contract.

26. SEVERABILITY

26.1 Each paragraph, subparagraph, clause and Article of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

27. ENTIRE AGREEMENT

27.1 These Purchase Order Terms and Conditions, including Orders, attachments, documents and appendices incorporated herein by reference, constitutes the entire Contract between Seller and Buyer, and supersedes all prior representations, agreements, understandings and communications between Seller and Buyer.

27.2 No amendment or modification to this Contract shall be binding upon either party unless it is set forth in a written instrument signed by authorized representatives of both Buyer and Seller.