

PURCHASE ORDER TERMS AND CONDITIONS

1. Acceptance of Contract. Vendor's execution of this Purchase Order ("PO"), acknowledgment of this PO, or commencement of shipment of the materials and/or equipment described in this PO shall be deemed acceptance of this contract and these terms and conditions. Acceptance of this contract is limited to the price and terms and conditions stated in this PO and in the plans and specifications for this Project and in the exhibits referenced herein. Terms on Vendor's invoice, quote, proposal, or other forms that are additional to or inconsistent with the provisions in this PO are objected to and rejected and shall be deemed a material alteration. No changes or deviations will be effective unless this PO is modified in writing and agreed to by an authorized representative of icon Mechanical Construction and Engineering, L.L.C. ("ICON").

2. Project Plans and Specifications. Vendor acknowledges that ICON has issued this PO because ICON has entered into a contract pertaining to construction of a portion of the Project, identified on the face hereof, and that the materials, equipment, and/or services (hereinafter sometimes referred to as the "Work") furnished hereunder are intended for use in connection with and/or for incorporation into the Project. Vendor agrees that it is bound to ICON in the same manner as ICON is bound to its client with respect to the Work covered by this PO and that all terms and conditions of the contract for construction of the Project, including all guarantee and warranty requirements, apply to the Vendor insofar as applicable to the Work to be furnished by Vendor. All materials, equipment, services, and warranties furnished hereunder shall be in compliance with this PO and Project plans, specifications, and the contract between ICON and its client (the "Contract Documents") and shall be subject to approval of ICON's customer, the Architect, Engineer, Owner, and any other person or entity to whom ICON's work is subject to approval.

3. Shipments. ICON shall not be responsible for any material or equipment received unless the Vendor's name and PO Number are clearly identifiable on the outer covering of each package, case, etc. Vendor shall clearly mark each package, case, etc. as specified in the Comments and Special Instructions/Provisions on the face of this PO or as otherwise directed by ICON. If the shipments are not tagged or clearly marked as directed by ICON and as required by this PO, the shipment may be rejected, and Vendor assumes responsibility for the rejected shipments and all costs incurred as a result, including, but not limited to, costs to return the materials and/or equipment to the Vendor, costs to tag or mark and re-ship the materials and/or equipment to the Project site, and any other costs and damages incurred by ICON due to such shipments being rejected because shipping tags were not attached or the shipments were not clearly marked at the time of delivery. Unless otherwise agreed in writing between ICON and Vendor, no partial shipments will be accepted.

4. Advance Notice of Delivery and Risk of Loss. Forty-eight (48) hours prior to delivering the materials and/or equipment to the Ship To location on the face of this PO, Vendor shall contact ICON via telephone at the number on the face of this PO and shall provide ICON the expected delivery date and time. Vendor's failure to provide such 48-hour notice shall be deemed a rejection of the equipment and/or materials if ICON's representative is not at the Ship To location to accept delivery of the materials and/or equipment. Risk of loss to the

materials, equipment, and services covered by this PO shall remain with Vendor until the materials and equipment furnished and services performed by Vendor are accepted by ICON. Vendor shall be responsible for loss, damage, or theft of the materials and/or equipment if Vendor delivers the materials and/or equipment to anyone other than a representative of ICON at the Ship To location set forth herein. Any damage to the materials, equipment, or services, or loss occasioned in transit to the Ship To location or observed during unloading shall be borne by the Vendor, notwithstanding the manner in which the materials and/or equipment are shipped or who pays the freight or transportation costs.

5. Boxing, Packaging, or Cartages. Unless otherwise stated on the face of this PO or otherwise agreed to in writing by ICON, Vendor shall not charge additional costs for boxing, packaging, or cartages.

6. Invoices. All invoices must be itemized, include the PO number and a Bill of Lading, and must be sent to: AP@iconmech.com. Vendor shall submit its invoice for materials and/or equipment no later than the day after delivery to the "Ship To" location shown on the face of this PO. If start-up and/or commissioning services and/or other labor are included in the scope of Work, Vendor shall submit a separate invoice for such services upon satisfactory completion of the services and approval of ICON, Owner, and any other person or entity to whom ICON's work is subject to approval. Vendor is responsible for submitting accurate invoices in accordance with this PO and the prices stated herein. Invoices containing an error or that are not in accordance with this PO shall be returned to Vendor for correction and resubmission.

7. Payment. Receipt of payment by ICON from its customer is a condition precedent to Vendor's right to payment from ICON. Payment for each portion of the Work (e.g., equipment, materials, services) shall be made within ten (10) days after ICON's receipt of payment for the same from its customer, unless other terms are stated herein or required by applicable law. If the PO amount is \$100,000 or greater and ICON's customer withholds retainage from payment to ICON, ICON shall be entitled to withhold retainage in the same percentage from payments to Vendor. Payment of such retainage shall be made to Vendor within ten (10) days after ICON receives payment of such retainage from its customer, unless other terms are stated herein or required by applicable law. ICON may withhold amounts otherwise due under this PO, and to the extent allowed by applicable law under other agreements or purchase orders between Vendor and ICON, to cover the reasonable estimate of any costs, losses, damages, or liabilities ICON has incurred or may incur for which the Vendor may be responsible or for claims made against ICON due to the fault of Vendor. The time for any early payment discount offered by Vendor shall not begin to run until all materials and equipment have been received by ICON and Vendor has properly submitted its invoice to ICON for the same.

8. Timeliness. Time is of the essence. Failure to comply with the time requirements stated in the Contract Documents or imposed upon ICON or stated herein shall constitute a material breach by Vendor. Should Vendor fail to timely deliver suitable materials or equipment or fail to timely perform the Work as required herein, or if Vendor's lead times change from

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the dates stated herein, ICON shall be at liberty to purchase the materials, equipment, or services elsewhere, deduct such costs from amounts that would otherwise be due to Vendor under this PO if Vendor had fully performed, and any excess amount incurred by ICON shall be chargeable to and paid by Vendor, and Vendor shall not be entitled to payment of any amount otherwise due hereunder except to the extent there is a balance remaining under this PO after delivery and start-up/commissioning of materials and equipment and completion of services described herein. Vendor shall be liable for all damages, extra expenses, including overtime and premium time, which are incurred by or are assessed against ICON as a result of delays of Vendor in delivery of suitable materials, equipment, or services, or delays of Vendor in preparing or submitting acceptable shop drawings or other required submittals. In the event of a delay in completion of ICON's work for the Project that is caused by delays of the Vendor in preparing or submitting acceptable shop drawings or other required submittals or delays of Vendor in delivery of suitable materials, services, and/or equipment, Vendor shall be responsible for and liable to ICON for any liquidated and/or actual delay damages assessed against ICON and any other actual delay damages incurred by ICON in proportion to the Vendor's share of responsibility for such damages.

9. Provisional production slot. Vendor shall guarantee a spot in production process and/or order system based on the issue date of this PO. Any delay in acceptance of this PO shall not alleviate Vendor's obligation to guarantee production slots and delivery dates.

10. Defective or Nonconforming Goods/Work. ICON shall have the right to reject materials, equipment, and Work that is found to be defective, nonconforming, or unacceptable to ICON, Architect, General Contractor, Construction Manager, or Owner. Materials and/or equipment rejected or supplied in excess of quantities called for herein shall be returned to Vendor at Vendor's expense. In the event ICON receives materials and/or equipment whose defect or nonconformity is not apparent on examination, but that later prove to be defective or nonconforming, ICON reserves the right to require replacement and payment of damages by Vendor. Payment is not a waiver of any claims by ICON if the materials, equipment, or services subsequently prove to be deficient.

11. Returns. ICON reserves the right to return to Vendor for a credit at the prices stated in this PO, or at prices otherwise mutually agreeable to the parties less any mutually agreeable restocking fee, any items of materials and/or equipment that are customarily carried by Vendor as stock items.

12. Shop Drawings and Submittals. Vendor shall submit in a timely manner all shop drawings and submittals with respect to the materials, equipment, and Work being performed by Vendor as required by the Contract Documents for approval prior to shipment or delivery of materials and equipment and prior to commencing Work. By submitting shop drawings and samples, Vendor represents that it has determined all measurements and field construction criteria, and that it has checked and coordinated each shop drawing and sample with the requirements of the Contract Documents and that the materials and equipment supplied will be consistent therewith. When ICON or the Architect/Engineer makes notes on

Vendor's submittal, Vendor shall submit a revised submittal highlighting everything that has changed from the prior submittal, including all of the changes noted by ICON and the Architect/Engineer, and any additional changes made by Vendor. The Work shall be in accordance with approved shop drawings and submittals except that approval of Vendor's shop drawings and submittals shall not relieve Vendor of responsibility for deviations from the Contract Documents, unless Vendor has specifically notified ICON of such deviation at the time of submittal and Architect or Engineer (as applicable) has given written approval of the specific deviation, ICON has received a change order under its contract with the Owner, General Contractor, or Construction Manager for such deviation, and ICON has issued a Change Order to Vendor authorizing the deviation.

13. Liens. Provided ICON makes payment of amounts due Vendor in accordance with these terms and conditions, Vendor will save and keep the Project referred to in this PO and the lands upon which it is situated free from liens by reason of any materials, equipment, services or other things supplied by Vendor. If ICON makes payment of amounts due Vendor in accordance with these terms and conditions and any lien is filed for which Vendor is responsible, Vendor shall promptly remove or discharge such lien. If Vendor fails to remove such lien by bonding it or otherwise discharging it, ICON may retain sufficient funds, out of any money due or thereafter to become due Vendor, to pay the same and all costs incurred by reasons thereof, and may pay such lien or liens and costs out of any funds due Vendor. When requested by ICON and as a condition precedent to payment, Vendor shall provide, in a form satisfactory to ICON, partial and/or final lien and claim waivers and affidavits from Vendor applicable to the materials, equipment, and Work for which Vendor seeks payment. Such lien and claim waivers may be conditioned upon receipt of payment.

14. Insurance. If the scope of Work includes labor, prior to Vendor commencing any such services/Work on the Project site, Vendor shall obtain and maintain for a period equal to the statutes of limitations and repose in the jurisdiction where the Project is located, the minimum insurance coverages required by ICON's contract with its customer. Vendor is responsible for requesting a copy of such contract from ICON and complying with such requirements. ICON and any other parties whom ICON is required to name as additional insureds shall be named as additional insureds on Vendor's commercial general liability, pollution, automobile liability and excess umbrella liability insurance policies. The forms of Additional Insured coverage shall be CG 20 10 (07/04) or CG 20 33 (07/04) and CG 20 37 (07/04). Additional insured status shall be provided for both premises/ongoing and completed operations. Vendor shall provide to ICON a certificate of insurance, using a standard ACCORD form, prior to commencement of Work and shall provide copies of required insurance policies, including all endorsements, when requested by ICON. The amounts of insurance Vendor is required to maintain shall in no way limit the liability of the Vendor.

15. Warranty. Vendor warrants its materials, equipment, services, and Work against deficiencies and defects and represents that its materials and equipment are merchantable, of good quality, free from faults and defects, fit and sufficient

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for the purpose intended, and in conformance with this PO and the other Contract Documents. Vendor warrants and guarantees that all materials and equipment furnished under this PO shall produce capacities and/or meet design specifications and functions as required by the Contract Documents or, if there are no such requirements in the Contract Documents, as published or warranted by the manufacturer. All materials, equipment, services, and Work not conforming to these requirements, may be considered defective. Vendor agrees to satisfy the most stringent warranty obligations set forth in this PO and other Contract Documents, including providing all manufacturer warranties. The warranty provided in this section shall be in addition to and not in limitation of any other right, warranty, or remedy required or imposed by law or by the applicable Contract Documents. If no guarantee or warranty period applicable to Vendor's materials, equipment, services, or Work is set forth in the Contract Documents, then Vendor's warranty as described herein shall extend for a period of one (1) year from completion of the Project and manufacturers' warranties shall extend for a period of one (1) year from completion of the Project or for the manufacturer's standard warranty period, whichever is longer. Vendor agrees to replace promptly at Vendor's expense any defective Work, materials, equipment, and/or services that fail to conform to the requirements of this PO or other applicable Contract Documents, and to replace, at Vendor's expense all work damaged or destroyed thereby, and replace with sound materials and equipment. For any such replacement that is required after the completion of the Project, the warranty period shall begin to run from the date such replacement is completed. Vendor shall be responsible for damages caused by defects in Work, materials, equipment, and/or services supplied by Vendor.

16. Indemnification. To the fullest extent permitted by law, Vendor shall indemnify and hold harmless ICON from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from: (i) defects or deficiencies in Vendor's materials, equipment, services, submittals, Work or performance of its obligations hereunder; and/or (ii) any actual or alleged infringement by Vendor of intellectual property rights. Vendor is not requested to indemnify ICON for ICON's own negligence.

17. Termination for Cause. If Vendor fails to furnish the required materials, equipment, or services or to carry out the Work in accordance with the Contract Documents in a timely manner and fails within three (3) days after receipt of written notice to correct such default, ICON may, without prejudice to any other right or remedy, terminate this PO. In the event of such termination, Vendor shall be entitled to no further payment except as provided in this section. In the event the unpaid balance of this PO, after deduction of all claims that

ICON may have against the Vendor, exceeds the total cost of completing Vendor's Work, such excess shall be paid to Vendor upon satisfaction of the conditions for final payment. If the total costs incurred by ICON exceed any such unpaid balance, Vendor shall be liable for and shall promptly pay such difference to ICON.

18. Termination for Convenience. ICON reserves the right to terminate this PO or any part for convenience. In the event of such termination, Vendor shall be paid for Work performed or materials or equipment incorporated into the work for which ICON is paid and material re-stocking charges for which ICON is paid. In the event of such termination, Vendor shall immediately stop all deliveries and Work hereunder.

19. Dispute Resolution. In the event there is a dispute or claim made against ICON pertaining to the materials, equipment, services, or Work supplied by Vendor, Vendor agrees to participate in and be bound by the same dispute resolution procedure and forum as ICON is bound. If Vendor does not participate, ICON may settle such claims pertaining to the materials, equipment, services, or Work supplied by Vendor as ICON, acting in good faith, deems appropriate and Vendor shall reimburse ICON for the settlement and all costs, damages, and expenses incurred by ICON. Other disputes or claims between ICON and Vendor shall be resolved through arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association unless the parties agree otherwise. In the event of a default by Vendor, the Vendor agrees to pay all costs incurred by ICON as a result of such default, including, but not limited to reasonable attorneys' fees.

20. Waiver. Failure of ICON at any time to require performance of any provision herein shall in no way affect ICON's full right to require such performance at any time thereafter. Failure of ICON at any time to enforce any rights or remedies herein shall in no way affect ICON's full right to enforce such rights and remedies thereafter. Nor shall the waiver by ICON of a breach by Vendor or the waiver by Vendor of a breach by ICON of any of the provisions hereof constitute a waiver of any subsequent breach of the same or any other provision.

21. Enforceability. The parties intend for this PO to be in accordance with and enforceable under applicable law. If, for any reason, any provision contained in this PO shall, to any extent, be invalid or unenforceable, the remainder of this PO shall nonetheless remain binding and valid and be enforced to the fullest extent permitted by law.