



Effective as of 3/1/2023

VENDOR PURCHASE ORDER TERMS AND CONDITIONS

- 1. Acceptance.** Vendor accepts this Purchase Order by signing the agreement and returning it to Trifecta Services Company and/or Trifecta Services Company of Raleigh, LLC (“TSC”), in either hard copy or electronically, by Vendor supplying all or any portion of the materials, equipment, or services described herein or otherwise ordered by TSC, or by Vendor accepting any deposits or payments for all or any portion of the materials, equipment, or services described herein or otherwise ordered by TSC. Acceptance shall be strictly limited to the exact terms set forth herein and no additional terms, exclusions, or conditions shall apply to this Purchase Order and/or the purchase of goods or services, such terms and conditions are expressly rejected. Any terms and conditions attached to or incorporated by reference by any proposal sent to TSC (regardless of whether such proposal is signed or not by TSC) are expressly rejected. No materials, equipment, or services shall be deemed accepted by TSC until TSC has had reasonable opportunity to inspect and/or observe performance of such materials, equipment, or services and acceptance shall be further conditioned upon the approval of the TSC. To the extent this Purchase Order is for goods owned by the Vendor, such goods, materials and equipment covered under this Purchase Order shall remain the property of Vendor until delivered to the location specified by TSC and they are accepted by TSC in accordance with this Purchase Order. Any damage to the material or equipment or loss of any kind occasioned in transit, or otherwise, shall be borne by Vendor notwithstanding the manner in which the materials or equipment were shipped or who paid the freight or transportation costs. TSC reserves the right to revoke this Purchase Order, at no cost, at any time prior to acceptance by Vendor. This Purchase Order, including the attachments and documents incorporated herein by reference, constitutes the entire agreement between TSC and Vendor and supersedes all other written or oral understandings, communications, agreements, bids, estimates, and quotations and cannot be amended, modified, changed, nor may any provisions hereof be waived, without TSC’s prior written consent. These Vendor Purchase Order Terms and Conditions shall apply to any subsequent oral or written orders for materials, equipment, or services by TSC and to be provided by Vendor.
- 2. Vendor Obligations.** All contract documents including, but not limited to, the TSC’s contract with the general contractor or other entity, TSC’s subcontract with Vendor, the plans and specifications, and addenda, and the documents incorporated therein (hereinafter, the “Contract Documents”) are incorporated by reference and made a part of this Purchase

Order. Vendor acknowledges that it is bound to TSC by all terms and conditions of the Contract Documents that govern Vendor's scope of work on this project. Vendor assumes all obligations and responsibilities that TSC assumes toward the general contractor, Owner or other entities in privity of contract with TSC in so far as they concern or relate in any way to Vendor's scope of work, and/or the materials, equipment, and services provided under this Purchase Order. If applicable, TSC will make copies of the Contract Documents (appropriately redacted), available upon written request from the Vendor. Vendor shall direct all communications involving Owner, general contractor, design professional or any other entities to TSC only, unless otherwise approved in writing. Communications include, without limitation, all requests for information, submittals, request for meetings, claims for extras or changes, or requests for time extensions or damages.

3. **Delivery.** Time is of the essence of this Purchase Order. Shop drawings, samples and other items required by the Contract Documents shall be submitted to TSC in accordance with the dates set forth in the Purchase Order or the schedule specified in the Contract Documents. Materials and equipment shall be shipped so as to be received by TSC by the date(s) specified in this Purchase Order or the Contract Documents. If Vendor fails to meet those scheduled date(s), TSC may enact one or more of the following: a) cancel any unperformed portion of this Purchase Order without liability on TSC's part, and purchase the materials or equipment which have not been delivered by the specified date(s) or for which the shop drawings, samples, or other items have not been received on schedule; b) require Vendor to reimburse TSC any and all damages it sustains that are attributable to or caused by Vendor's failure to meet the delivery date(s), including any direct, consequential, or liquidated damages sustained by TSC as well as all attorney's fees, costs and expenses incurred by TSC; or c) require Vendor to reimburse any and all costs to TSC over and above the price specified in this Purchase Order. TSC shall be the sole judge of the promptness required to meet the date(s) applicable to Vendor herein. Vendor shall contact the TSC prior to delivery of materials to make appropriate arrangements. TSC reserves the right to refuse delivery, at Vendor's sole cost, if Vendor fails to make prior arrangements.
4. **Warranty.** Vendor warrants that the materials, equipment, goods and services furnished under this Purchase Order shall a) fully meet and conform to the requirements of the Contract Documents; b) be new and free from all defects in material and workmanship and will be merchantable; and c) to the extent not manufactured, furnished or installed pursuant to designs furnished by TSC, be free from all defects in design and fit for the intended purpose. Vendor hereby acknowledges that it is bound to TSC, to the same extent as TSC is bound to others, by the warranty/guarantee provisions of the Contract Documents. Vendor guarantees to replace and/or repair, without cost to TSC, any defective or nonconforming material or equipment. Vendor shall remedy, without cost to TSC, any latent defect not due to ordinary wear and tear and not due to improper maintenance or operation, which may develop within one year of acceptance of the project by the Owner or such longer period specified in the Contract Documents. Vendor shall be responsible for any and all damages resulting from its breach of guarantee/warranty with respect to the material, equipment or services supplied under this Purchase Order and shall indemnify and hold harmless TSC

from any loss, including consequential or liquidated damages, resulting from the defective or non-confirming condition of the Materials. NO ATTEMPT BY VENDOR TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR VENDOR'S LIABILITY FOR SUCH DAMAGES SHALL BE OF ANY FORCE OR EFFECT. Acceptance by Owner and/or payment for the material and equipment by TSC shall not relieve Vendor from these warranty/guarantee provisions. The warranties of Vendor shall run to TSC, its successors, assignees, and customers and users of products sold by TSC. Vendor hereby assigns to TSC any warranties or guarantees provided by manufacturers or vendors of products incorporated into material, equipment or services provided by Vendor hereunder and shall upon request enforce any such warranty or guarantee on behalf of TSC. Warranty may exceed one (1) year if required by the Contract Documents.

5. **Defective Materials, Equipment, or Services.** The materials, equipment, goods and services furnished under this Purchase Order shall fully comply with all local, state and national laws, codes, and regulations. If any of the materials or equipment delivered or services performed under this Purchase Order fail to comply with applicable laws, codes, or regulations or fail to meet the requirements of the Contract documents or do not fulfill TSC's internal needs or if Vendor fails to deliver or otherwise perform its obligations under this Purchase Order to meet scheduled date(s), TSC may enact one or more of the following: a) reject the defective materials or equipment and return them to Vendor at Vendor's cost and cancel all or any portion of this Purchase Order without liability on TSC's part; b) require Vendor to remove and replace the defective materials or equipment or to make the necessary corrections or modifications to completely satisfy the requirements of this Purchase Order at Vendor's sole expense; c) require Vendor to correct or modify the defective materials or equipment to satisfy the requirements of this Purchase Order at Vendor's sole expense; d) back charge Vendor for all losses and damages resulting from Vendor's failure to supply materials, equipment, or services in conformance with the requirements of this Purchase Order including, but not limited to any damages TSC suffers as a result of Vendor's actions or omissions. All such charges may be withheld by TSC from amounts due to Vendor. Vendor shall immediately reimburse TSC the full purchase price with respect to any materials, equipment, or services returned by TSC. TSC shall not be responsible for any fees or charges incidental to the returned materials, equipment, or services including, but not limited to, restocking fees or similar charges. These shall not be considered TSC's exclusive remedies and TSC retains entitlement to any and all additional remedies provided by law or other provisions of this Purchase Order.
6. **Payment.** If applicable, payment to Vendor shall be made within thirty (30) days after TSC receives payment from the general TSC or Owner. It shall be a condition precedent to any liability of TSC to Vendor for any payments under this Purchase Order, that TSC has first received payment from the general TSC or Owner for the Vendor's materials, equipment, or services for which payment is sought. TSC may condition any partial or final payment to Vendor on receipt of release and waiver of claims, liens, and bond claims and affidavits in form acceptable to TSC, together with evidence of proof of payment of Vendor's obligations. If Vendor fails to sign and return this Purchase Order and its attachments, TSC reserves the

right to withhold payment until all documents have been received and are in accordance with the terms and conditions of this Purchase Order. TSC reserves the right to withhold progress payments or final payment for Vendor's failure to comply with any obligations under this article.

7. **Changes.** Vendor shall not deviate from the terms of this Purchase Order or the Contract Documents without TSC's prior written consent. Vendor shall be responsible for any and all damages incurred as a result of Vendor's deviation from the terms of this agreement, including but not limited to all attorneys' fees, costs, and expenses sustained by TSC. When requested in writing by TSC, Vendor shall make any additions, deletions, or changes within the scope of this Purchase Order without nullifying it. Prior to commencing such change(s), Vendor shall promptly submit to TSC a written proposal of cost increase or credit breakdown for the change(s) in a manner acceptable to TSC and in compliance with the Contract Documents. Vendor agrees to proceed with the change(s) and the revised delivery date(s) as determined by TSC. Vendor or TSC must agree to any adjustment in Purchase Order price as a result of any change(s). If there is no such agreement, the adjustment shall be determined by arbitration as provided herein but in no event shall the amount of adjustment exceed the amount, if any, paid to TSC by the Owner or others under TSC's contractual obligations with respect to this project applicable to said change(s). It is the sole responsibility of the Vendor to monitor the Contract Documents for changes, TSC will send drawing updates to the extent they are provided by the general TSC, Owner, or design professional. Vendor is solely responsible for complying with any and all changes shown in the Contract Documents. Vendor, upon receipt of changes shall immediately make changes to any and all shop drawings affected by the revisions and/or changes and re-submit the drawings to the TSC for review and submission to the general TSC, Owner, or design professional. Notification of any claim for increased costs or a time extension must be made in writing in accordance with the requirements of the Contract Document or within ten (10) days of Vendor's knowledge of the claim, whichever is shorter. Otherwise such claim shall be deemed waived. Vendor shall not be entitled to additional compensation or a time extension for any such change unless TSC has ordered the change in writing and TSC has been advised in writing of the associated cost and time impact (if any) in advance of the work. Prior to implementation of the change, the parties shall execute a change order or field ticket describing the nature and scope of the change, and the cost impact of the change, if any. When applicable, price adjustments shall be based on the unit price schedule. Agreement on any change order shall constitute a final settlement of all matters related to the change in the Work, which is the subject of the change order, including, but not limited to (1) all direct and indirect costs associated with such change; (2) any impact such change may have on the unchanged Work, and (3) any and all adjustments to the amount of this Agreement and the Construction Schedule. No separate claims for delay damages, disruption, inefficiencies, or acceleration with an approved changed order shall be asserted as a claim.
8. **Termination for Default.** If Vendor fails to furnish or deliver the materials, equipment, and services as provided in this Purchase Order; fails to comply with any written directions or orders of TSC; fails to pay for all labor, materials, equipment, or other services to whom it

may be indebted in connection with the project; becomes insolvent, seeks protection under the bankruptcy laws or suffers a receiver or trustee to be appointed; or violates any material terms of this Purchase Order, then TSC, after three days written notice, may terminate this Purchase Order for default. Upon a termination for default, Vendor shall be entitled to no further payments until receipt by TSC of its final payment for the project. Then, if the unpaid sums shall exceed TSC's cost of completion and damages, including attorneys' fees, TSC shall pay Vendor the balance to the extent of the excess; but if the cost plus all damages including attorneys' fees exceed the unpaid sums, Vendor shall pay the difference to TSC.

9. **No Price Adjustment.** Unless expressly permitted by the Contract Documents and payment is actually received by TSC, the price of this Purchase Order is final and not subject to adjustment for any surcharges resulting from any sales, use, or other taxes, or any Federal, State or Local ordinance, regulation, law, tariff, or code which is in effect or may become in effect during the term of the project. Likewise, the price of this Purchase Order is final and not subject to adjustment for any price escalations or increased cost of raw materials, fuel, or otherwise.
10. **Taxes, Licenses, Permits and Fees.** Unless otherwise agreed to in writing, the price of this Purchase Order includes all applicable taxes, fees, assessments, licenses, permits, and royalties. Vendor further represents and warrants that it is lawfully licensed, as required, in the jurisdiction where the Project is located. Vendor shall indemnify and hold TSC harmless from all claims, disputes, or contributions arising out of Vendor's failure to pay all applicable taxes, fees, wages, assessments, licenses, and royalties and/or failure to hold, obtain, or procure the necessary licenses, permits, or approvals.
11. **Assignment.** Vendor shall not assign nor subcontract all or any portion of the obligations of this Purchase Order, or any right or interest therein, or any money due pursuant to this Purchase Order, without TSC's prior written consent. TSC may, at TSC's option and in its sole discretion, assign all remaining rights, responsibilities and obligations under this Purchase Order, with or without Vendor's prior written consent, to a qualified assignee. In the event of such assignment, TSC shall provide written notice to Vendor. In the event of such assignment, TSC shall remain financially responsible for a pro-rated share of any amounts owned under the Purchase Order prior to the date of the assignment, with Vendor agreeing to look solely to assignee for payment and performance of any obligations post-assignment.
12. **Severability.** If any provision of this Purchase Order is held to be unenforceable, the remaining provisions shall continue in full force and effect.
13. **Dispute Resolution.** Disputes arising out of the Contract Documents and/or the general contractor's or Owner's acts, omissions or responsibilities shall be resolved in accordance with the disputes procedures in the applicable Contract Documents. Vendor shall have the right to exercise those rights at its sole cost and shall be bound thereby. Payment by the general contractor or Owner to the TSC on such Vendor claim shall be a condition precedent to TSC's payment to Vendor. TSC shall have no direct liability therefor other than to give

Vendor the opportunity to exercise rights under the Contract Documents. All claims, disputes and matters in controversy between the parties concerning or relating to construction services shall be resolved by binding arbitration conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties agree otherwise. All arbitration proceedings shall take place in Charlotte, North Carolina. All other claims, disputes and matters in controversy between the parties shall be resolved in the state and federal courts located in Charlotte, North Carolina. The rights of the parties hereto shall be construed under and governed by the substantive laws of the state of North Carolina, without regard to conflicts of law that would require the application of the laws of another jurisdiction. Prior to the filing of any lawsuit, the parties hereto shall attempt to resolve any dispute, controversy, or claim in an amicable manner. If no settlement is reached within a period of twenty (20) business days of a party providing notice of a dispute to the other party, the parties shall submit the dispute to mediation in front of a qualified mediator located in Charlotte, North Carolina with each side paying half of the costs and expenses of mediation, in addition to their own attorneys' fees in connection with the mediation. In the event such mediation is unsuccessful, either party may pursue their legal rights in court or in arbitration, as may be applicable. In the event of a claim, dispute, or matter between TSC and Vendor, as referred to in this Section 13, the prevailing party in such claim, dispute or matter shall be entitled to recover its reasonable attorneys' fees, expert witness fees, and other reasonable costs of such claim or dispute. Pending the resolution of any dispute, Vendor shall continue to furnish or deliver materials, equipment, or services and otherwise satisfy its obligations under this Purchase Order.

14. Insurance. Vendor shall comply with all insurance requirements set forth in the Contract Documents. If no such requirements exist, Vendor, and any person or entity directly or indirectly employed by Vendor, hereby agree to obtain and/or maintain proper worker's compensation or employer's liability insurance (at statutory limits in the jurisdiction where work is being performed), commercial general liability insurance (for no less than \$2,000,000.00), public liability insurance (for no less than \$1,000,000.00), and automobile liability insurance (for no less than \$1,000,000.00). To the extent that the Vendor is performing any professional services, such as design, detailing, or engineering, Vendor and any person or entity directly or indirectly employed by Vendor, hereby agree to obtain and/or maintain Errors and Omissions insurance in an amount not less than \$1,000,000.00 per claim. To the extent Vendor is providing hauling or transportation services, Vendor and any person or entity directly or indirectly employed by Vendor, hereby agree to obtain and/or maintain automobile liability coverage for no less than Five Million Dollars (\$5,000,000.00) per claim with a deductible of not more than \$5,000 per claim, together with motor truck cargo coverage for no less than Two Million Dollars (\$2,000,000) per claim with a deductible or self-insured retention of not more than \$5,000 per claim. Such insurance, to the extent Vendor is transporting any vehicles or equipment for TSC, shall include coverage for any loss of use. TSC, together with any other entities as required under the Contract Documents, shall be named as an additional insured on a primary and noncontributory basis under vendor's commercial general liability, commercial auto liability, and motor truck

cargo coverage policies. Further, where applicable by law, an MCS-90 endorsement will be required.

All insurance, except Errors and Omissions, shall be on an occurrence basis. All insurance shall be issued by companies with a minimum AM Best rating of A- (VII) or better, and contain waivers of subrogation in favor of TSC and Owner. *TSC, the Owner, and all parties required by the Contract Documents shall be named as an additional insured under all insurance required by this Agreement, except worker's compensation and Errors and Omissions insurance.* Upon TSC's request, the Vendor or their insurance company/agent shall send their certificate of insurance with these requirements to TSC with the Purchase Order number listed on the certificate. To the fullest extent permitted by law, the insurance afforded to the additional insured(s) shall be as broad as the insurance afforded to the first named insured. In the event any party provides insurance with limits greater than those required, the insurance afforded to an additional insured shall be up to the full limits provided by such policy, and this Agreement shall be deemed to require such full limits. Vendor may achieve the required limits and coverage for General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Contract Documents or the Purchase Order.

TSC reserves the right to withhold payment of any invoice until receipt of an appropriate certificate of insurance in compliance with this paragraph 14.

15. Indemnity. To the fullest extent permitted by law, Vendor shall indemnify, defend, and hold harmless TSC, its subsidiaries, officers, directors, shareholders, partners, employees, successors and assigns, and any other person or entity required to be indemnified by TSC under the Contract Documents (hereinafter "Indemnitees"), against claims, damages of any kind (including but not limited to, punitive, consequential, loss of use, delay and any other kind of damages), losses and expenses, including but not limited to reasonable attorneys' fees, costs, deductibles, retention amounts, and expenses to the extent caused by, or claimed to have been caused in whole or in part by, any negligent, reckless, or intentional act or omission of Vendor, damage to any real or personal property caused by Vendor (regardless of any actual negligence on Vendor's behalf) or suffered while Vendor was in custody or control of such property, or any breach of this Purchase Order, and regardless of whether such claims, damages, losses and expenses are caused in part by an indemnified party hereunder.

16. Contract Flow Down. The requirements of the any prime contract documents to the extent they flow down to TSC are hereby flowed down to the Vendor via this Purchase Order. The Vendor shall fulfill these requirements at all times and pass these requirements to any and lower tiered subcontractors and/or suppliers as applicable to the item or services being produced. Failure to adhere to these requirements and/or flow down these terms to lower

tier subcontractors and/or suppliers shall be cause for the services and/or items purchased herein being rejected and/or non-payment by the TSC.

17. LEED Requirements. All LEED requirements set forth in the Contract Documents are hereby passed down to the Vendor. Vendor shall fulfill any and all LEED requirements applicable to its trade, scope of work, or supplied materials via submission to the TSC no later than 30 days after start of work. If LEED submittals are not received, TSC reserves the right to withhold payment until submittals are received and approved by the general TSC, Owner, or design professional.

18. Non-Receipt / Non-Compliant. The Vendor shall bear all costs associated with the TSCs non-receipt of (or rejection of) materials, equipment, or services for any and all reasons outside of the TSC's reasonable control, items deemed non-compliant with the Contract Documents, by the general TSC, Owner, design professional, inspection agency, or by the TSC, or by this statement of work. All costs associated with mis-fabrications, late delivery or incorrect coordination and/or interpretation of the Contract Documents shall be the responsibility of the Vendor.

19. Technical Requirements. Vendor shall utilize and comply with nationally recognized codes, standards, and practices per the Contract Documents to fulfill the scope of work outlined within this statement of work. The Vendor shall be expressly responsible to obtain and adhere to codes required by the Contract Documents and any manufacturer's recommendations or requirements. Vendor is solely responsible for reviewing, interpreting, and complying with Contract Documents including any items that shall be reasonably inferred by a similarly situated vendor. The materials shall be in accordance with approved submittals except that the Vendor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the general contractor's, Owner's, TSC's, or design professional's approval of shop drawings, product data, samples, or similar submittals, unless the Vendor has specifically provided written notice of such deviation at the time of submittal and the general contractor, Owner, TSC, and design professional have given written approval to the specific deviation. The Vendor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples, or similar submittals, by general contractor, Owner's, TSC's, or design professional's approval thereof.

20. Authorized Representatives. Within ten (10) working days of the issuance of the Purchase Order, Vendor shall identify in writing to the TSC in writing who the Vendor's representatives will be for the duration of the project. The authorized representative shall be a person designated by the Vendor to send and receive any and all communication required. Additionally, that person shall have authority to bind the Vendor to changes in the terms of the Purchase Order resulting from contract changes, revisions, or at the direction of the TSC. At a minimum the following must be provided for the Authorized Representative; Name, Office Phone, Cell Phone, Email Address and Office Address.

21. Non-Discrimination / Equal Opportunity. Vendor is notified that it may be subject to the

provisions of the Equal Opportunity Clauses required by Executive Order 11246 as amended (currently found at 41 CFR Part 60-1, Subpart A), the Vietnam Era Veterans' Readjustment Assistance Act of 1974 as amended (currently found at 38 U.S.C. § 4212, 41 CFR 60-300), and/or Section 503 of the Rehabilitation Act of 1973 as amended (currently found at 29 U.S.C. § 793, 41 CFR 60-741), unless exempted by rules, regulations, or orders of the Secretary of Labor. Vendor shall abide by the applicable requirements of the aforementioned statutes and regulations. These statutes and regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these statutes and regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment qualified protected veteran and qualified individuals with disabilities, provide certain safeguards for employees under these clauses, and include these requirements in subcontracts and purchase orders above a certain monetary threshold.

22. Set-off. TSC shall be entitled to set-off any amounts owing by TSC to Vendor against amounts owed to TSC or its affiliates.