



PURCHASE ORDER AGREEMENT

1. AGREEMENT:

The company issuing the purchase order, Adkins and Kimbrough Mechanical, LLC (“Buyer”) of Birmingham, Alabama, and the company agreeing to supply (“Seller”) the equipment, material or services (“Product”) agree that the following purchase order terms and conditions shall be considered attached to and a part of the issued purchase order (collectively “Agreement”). As written, the purchase order becomes a binding contract on the terms set forth herein, when accepted by Seller via a formal written acknowledgement to Buyer or by commencement of any of the work called for under the purchase order. The purchase order expressly limits acceptance to the terms and conditions stated herein and additional or different terms proposed by Seller, including an order acknowledgement, are rejected unless expressly agreed to in writing by Buyer. Buyer and Seller further agree that the period of limitation on the commencement of any action, suit or legal proceedings relating to this order or to any default or alleged default hereunder, must be commenced within two (2) years from the date of the event giving rise to the claim.

The purchase order is non-assignable by Seller. If any term or provision of the purchase order or the application thereof shall be deemed invalid or unenforceable, the remaining portions shall not be affected thereby and shall be valid and enforced to the fullest extent permitted by law.

2. PERFORMANCE AND DELIVERY:

Due to the nature of the work being performed by Buyer, all deliveries are to be made in quantities and at times specified in the purchase orders. Buyer shall have no liability for payment for material or items delivered to Buyer which are in excess of quantities specified in the delivery schedule or the direct temporary suspension of scheduled shipments. With written notification, Buyer reserves the right to alter the delivery schedule up to 5 days before delivery is due.

Seller acknowledges that it is aware that Buyer intends to use Product in connection with the assembly of systems for Buyer’s customers under contracts that require timely delivery. In the event of default on the part of Seller to deliver conforming Product to Buyer on time, Seller acknowledges that it shall be liable to Buyer for Buyer’s incidental and consequential damages incurred by reason of such default. Acceptance by Buyer of late delivery of either the whole or part of the order shall not constitute a waiver of any claim for damages which Buyer may have arising from and out of such late delivery. Product delivered to Buyer in advance of delivery schedule, without express written consent of Buyer, may be returned to Seller or stored for Seller at Seller’s expense.

3. CHANGES:

Buyer reserves the right at any time to make written changes in any of the following: (a) specifications, drawings and data incorporated in this contract where the terms to be furnished are to be specially manufactured for Buyer, (b) methods of shipment or packing, (c) place of delivery, (d) time of delivery, (e) manner of delivery, and (f) requested quantities. If any such change causes an increase or decrease in the cost or the time required for performance under this Agreement, an equitable adjustment shall be made in the contract price or delivery schedule or both. Any claim by Seller for adjustment under this clause must be approved by Buyer in writing before Seller proceeds with such change. Price increases shall not be binding on Buyer unless evidenced by purchase or change notice or revision issued and signed by Buyer.

4. PRICE & TAXES:

All prices shall be F.O.B. point of delivery (i.e., order ship to address), unless otherwise specified herein, inclusive of applicable taxes, excises, duties, quotation fees or any other governmental impositions on or related to the production, sale or transportation of Product, ceiling or other limitation of price established by any governmental authority, and subject to increase only with prior written consent of Buyer. Unless otherwise noted sales tax is applied to the ship to address as applicable.

5. INVOICING AND PAYMENT:

Seller shall invoice the Buyer for Product received under the purchase order. Seller shall be paid for complete and correct work or accepted materials within the payment terms indicated on the purchase order, but not before payment is received from the Buyer’s customer, the ultimate beneficiary of the Product, and reasonable time for payment processing. Discount period will be

calculated from the date of receipt of materials, or the receipt of invoice, whichever is later. If your company reports to D&B, you will send a report to Adkins & Kimbrough, Mech., LLC for review before sending to D&B.

6. PACKAGING AND LABELING:

All shipments shall be packaged as best determined by the Seller, unless otherwise indicate on the purchase order, and include packing slips containing a description of the articles, applicable Material Safety Data Sheets, the purchase order number, the job name, the job number, the project manager's name, and the job site to which the shipment is destined. Any unnecessary expense resulting from mis-routed shipments shall be charged to Seller.

7. INSPECTION AND RETURNED PRODUCT:

All Product shall be received subject to Buyer's allowance of 48 hours from delivery for a thorough inspection for damage, and subsequent acceptance or rejection. In the case any of Product which is found to be defective or otherwise not in conformity with the requirements of the purchase order, Buyer shall have the right to reject the same or require that such Product be corrected or replaced promptly. If Buyer so rejects Product or if Seller, when requested by Buyer, fails to proceed promptly with the replacement or correction thereof, Buyer may either terminate some or all of the items in the purchase order for default or may replace or correct such Product, and in either event may charge Seller the cost of damages occasioned Buyer thereby. Rejected or defective Product shall be held at Seller's risk for a period of 30 days from notification while awaiting Seller's instruction, and if Seller so directs, shall be returned at Seller's expense. Unless Buyer, at its option, notifies Seller to the contrary, no Product returned as defective shall be replaced without a new purchase order. Payment for Product on the purchase order prior to inspection shall not constitute a final acceptance thereof. Restocking fees or related charges shall not be allowed on any returned product, whether from damage, non-conformity, over-order, or any other reason. The Buyer shall receive full, original price credit or refund for any accepted, undamaged Product returned to the Seller.

8. WARRANTIES:

Seller warrants that Product furnished hereunder shall be (a) free of infringements of property rights of third parties, (b) free of defects in material and workmanship, (c) of the highest grade and quality, (d) merchantable and fit for the particular purpose(s) known by or disclosed to Seller, and (e) shall meet or exceed all published and otherwise agreed upon specifications, blueprints, designs, drawings, samples, models, descriptions, instructions and other items relating to the specific job referred in the purchase order. Seller further warrants that Produce shall comply with all applicable local, state, and federal laws, regulations, and codes, and shall be in compliance with all standards and requirements incorporated and made a part of this Agreement. All warranties granted hereunder shall include repair or replacement by Seller, at Buyers option, and shall extend to Buyer, its affiliates, successors, customers and other users of Product.

9. RECORDS:

Seller shall maintain on its premises for the useful life of the material and the design life of the equipment covered by this Agreement and to make available for inspection or, if requested, to provide copies to Buyer during standard business hours, any and all records pertaining to Product inspection, certification qualification data, and related information.

10. FORCE MAJEURE:

Either Buyer or Seller may suspend performance during the occurrence of an excusable delay, which shall mean and include any delay not occasioned by the fault or negligence of the delayed party and which results from the acts of God or public enemy, restrictions, prohibitions, priorities, or allocations imposed by governmental authority, embargoes, floods, fires, typhoons, earthquakes, epidemics, unusually severe weather, delays of similar nature or governmental causes, and strikes or labor disputes (of or involving the delayed party's employees only). Excusable delays do not include lockout, shortage of labor, lack of or inability to obtain raw materials, fuel or supplies or any other industrial disturbance.

11. INDEMNIFICATION:

Seller shall indemnify, save and hold harmless, and defend Buyer from and against any and all loss, damage, cost, charges or expenses, or claims for same which Buyer may suffer or sustain or be in any way subjected to on account of injury to, or death of, any persons, or damage to or loss of property arising out of performance of the purchase order by Seller, its employees, agents or representatives, or the use or sale of Product by Buyer or its customers, except when due to the sole negligence of Buyer.

12. INSURANCE:

Where accomplishment of the purchase order requires the performance of services or labor at job sites or on Buyer's premises, Seller shall obtain and maintain insurance coverage until the work is completed and accepted by Buyer, and shall furnish certificates from its insurance carriers indicating coverage with the following minimum limits: (a) Statutory Workers' Compensation and Occupational Disease coverage in accordance with the laws of the State(s) in which the Work is to be

performed and Employers' Liability for not less than \$100,000; (b) Commercial General Liability insurance with a limit (Bodily Injury/Property Damage) of \$1,000,000 per occurrence and a policy aggregate of \$2,000,000; (c) Automobile Liability, including non-ownership and hired car-coverage, with Combined Single Limit (Bodily Injury/Property Damage) of \$1,000,000 per occurrence.

Any Seller required to install equipment or materials as a part of completing the purchase order shall also maintain Installation Floater coverage with a limit of not less than \$100,000 per occurrence and shall name Buyer as an Additional Insured on the Seller's General Liability policy.

13. RELEASE AGAINST LIENS OR CLAIMS:

Any Seller functioning as a subcontractor in fulfilling the purchase order shall be required to promptly pay all claims of persons or firms furnishing labor, equipment or materials used in performing the work required under the purchase order. Buyer may require Seller to submit satisfactory evidence of payment and releases of all such claims. With any evidence of unpaid claims, Buyer may withhold payment until Seller has furnished such evidence of payment and release, and Seller shall indemnify and defend Buyer against any liability or loss arising from such claim. Seller shall, to the fullest extent permitted by law, waive any and all rights to place a lien or small claim against the Buyer's project.

14. PATENTS:

Seller shall hold Buyer harmless from liability as well as from all costs and expenses relating to a claim of patent or trademark infringement by reason of the use or sale of standard Product by Buyer, or its customers, provided Product is used as normally intended and is not made solely to Buyer's own specifications.

15. TERMINATION:

Buyer may terminate work under the purchase order in whole or in part at any time by letter, fax or electronic (e.g., e-mail) notification to Seller. Such notice shall state the extent and effective date of such termination and upon receipt thereof, Seller shall, as and to the extent directed by Buyer, stop work under the purchase order and the placement of further purchase orders or sub-contracts hereunder, terminate work under purchase orders and sub-contracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. If the parties cannot by negotiation agree within a reasonable time upon the amount of fair compensation to Seller for such termination, Buyer, in addition to making prompt payment of the amounts due for Product delivered prior to the effective date of termination, shall pay to Seller the following amounts without duplication: (a) the contract price for all Product which have been completed in accordance with the purchase order and not previously paid for, or (b) the actual costs incurred by Seller which are properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of the purchase order. In any case, the negotiated settlement amount shall not exceed the aggregate price specified in the purchase order.

16. HAZARDOUS SUBSTANCES IDENTIFICATION:

By acceptance of this Agreement, Seller certifies that any hazardous substance(s) furnished pursuant to the purchase order have been properly labeled and that proper information of the substance(s) (e.g., Material Safety Data Sheets) have been provided to Buyer, pursuant to any federal, state or local laws and regulations.

17. COMPLIANCE WITH LAWS:

All Product supplied by the Seller under the purchase order shall comply with all applicable federal, state and local laws, ordinances and regulations. This requirement shall include, but not be limited to, the following: (a) The Wage Hour Act, (b) The Fair Labor Standards Act, (c) The Federal Occupational Safety and Health Act, (d) Non-discrimination in Employment, (e) The Vietnam Era Veterans Readjustment Act of 1974, (f) The Rehabilitation Act of 1973, (g) The Walsh Healy Public Contracts Act, and (h) the applicable provisions of 41 C.F.R. 60. Unless otherwise expressly set forth herein, the laws of the State of Alabama shall apply to and govern the interpretation, performance and enforcement of this Agreement.

18. EQUAL EMPLOYMENT OPPORTUNITY:

In fulfillment of this Agreement, Seller shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privilege of employment, or matters directly or indirectly related to employment because of age, sex, height, weight, marital status, race, color, religion, national origin and ancestry. Seller shall comply with all applicable provisions of Executive Order 11246 of September 24, 1965 as amended. Breach of this covenant may be regarded as a material breach of this Agreement.