

Cerris Builders, Inc.
3712 Helios Way
Pflugerville TX 78660

Terms and Conditions

Date
PO #:

- 1. Packing and Shipping:** (a) Every possible precaution and measure must be taken in packing, crating and preservation of equipment and/or materials prior to shipment to minimize in-transit and storage damage. This equipment is to be packed and preserved for outdoor shipping and storage, unless otherwise directed by Purchaser. (b) Each item of equipment shall be tagged or stenciled legibly identified and shall include the following: (1) name of Supplier; (2) shipping address; (3) P.O. #; (4) equipment I.D.#; (5) box and package no.; (6) weight. (c) A release date will be established. No fabrication is to be started or shipments made until approval is obtained on Supplier's submittal data and Supplier has received Purchaser's release. (d) Purchaser is to be advised by Supplier on shipping date of: routing, name of carrier, trailer or pro numbers; total weight; and estimated time of arrivals. Carrier MUST notify Purchaser at least 48 hours prior to delivery in order to facilitate unloading. (e) Neither delivery nor inspection of goods shall constitute acceptance of them. (f) Purchaser reserves the right to inspect the goods at any time prior to shipment as well as upon delivery. If materials are unacceptable, Purchaser may, at its option, (1) reject same, or (2) cause their correction, at Supplier's expense.
- 2. Work, Liens and Waivers:** Supplier acknowledges that it is aware that the work which is the subject of this P.O. is to be performed as a part of, and the materials which are the subject of this P.O. are purchased for use in performance of, the contract between Owner and Purchaser, which includes, but is not limited to the specifications and plans ("Contract Documents"), all of which are incorporated herein by reference except those provisions, if any, of the General and Special Conditions of the Contract Documents which are inconsistent with the express terms of this P.O. Supplier agrees both to deliver the material to Purchaser and to perform the work free and clear of all claims, encumbrances or liens, and upon request by Purchaser to furnish waivers, releases or other evidence of payment from its suppliers, materialmen and others connected therewith. If Supplier is performing work, then Supplier shall provide sufficient, safe and proper working conditions at all times, shall maintain liability and other insurance in amounts, with coverage and companies satisfactory to Purchaser and shall on request furnish appropriate certificates to Purchaser evidencing such compliance.
- 3. Warranties:** (a) Supplier warrants that all work and material shall be new, of first quality and construction, free from defects, of good workmanship, suitable for their intended purposes and in strict accordance with all requirements of the Contract Documents, and will meet all capacities, functional tests and criteria required in them. (b) Supplier warrants that it is in full compliance with all applicable laws, including but not limited to the Fair Labor Standards Act, OSHA EEOC and laws affecting employment of aliens. (c) Supplier shall furnish to Purchaser all MSDS sheets relevant to items furnished hereunder.
- 4. Freight and Taxes:** Unless otherwise specified on the face hereof, freight and taxes are included in the total price shown on the face hereof to be paid Supplier by Purchaser, and Supplier assumes, accepts exclusive liability for and agrees to pay all freight and all taxes, contributions and assessments, including any federal, state, or municipal old age benefit, social security or unemployment compensation law and sales, use or other excise taxes.
- 5. Time is of the Essence:** Supplier agrees to perform the work and furnish the materials called for so as not to impede or delay Purchaser or others in the performance of the Contract Documents.
- 6. Indemnification:** Supplier agrees to indemnify, defend and hold harmless Purchaser and Owner and such other parties as identified in the Contract Documents from and against all claims, causes of action and expense (i) arising out of injury to (including death of) any persons or damage to property alleged to have been caused in whole or in part by any act or omission of Supplier, its agents, employees, sub-subcontractors, suppliers or invitees, (ii) caused in whole or in part by any act or omission (whether or not negligent) of Supplier, its agents, employees, sub-subcontractors suppliers or invitees, in the performance of the P.O. and (iii) arising out of (a) Supplier's payment of contributions, penalties or interest due under any state Employment Security Law; (b) any alleged defects or failures in Supplier's products; (c) all tax liabilities of Supplier; (d) any infringement of patent, trademark or trade secrets; and (e) any mechanic's liens or payment bond claims by those claiming payments owed by Supplier. Supplier shall defend all suits brought against Purchaser and/or Owner on account of any such claims of liability, shall pay any settlements made or judgments rendered with respect thereto, and shall reimburse and indemnify Purchaser for all expenses, including court costs and reasonable attorneys' fees, incurred by Purchaser. The obligations set forth in this paragraph are continuing and shall survive occupancy, completion of the construction project, termination of the P.O., acceptance of work, or final payment to Supplier.
- 7. Changes:** Purchaser reserves the right to order changes in writing in the work and materials required hereunder and this P.O. shall be modified accordingly. No change shall be made in this P.O. without such written order and no claim of payment by Supplier for extras will be allowed unless such payment and such extra work and material are agreed to in writing by Purchaser.
- 8. Defective Work:** If any work performed or articles delivered hereunder shall be condemned or rejected on the ground that such were defective in material or workmanship or did not conform to the Contract Documents, then, in addition to Supplier's other obligations and Purchaser's other rights, Supplier shall bear and reimburse Purchaser for such costs, expenses, delays and damages as Contractor and others shall incur as a result thereof, including replacement of such defective work and damage to other work, and shall perform Contractor's warranty to Owner with respect thereof.
- 9. Remedies:** (a) If Supplier shall fail to perform in a timely manner, Purchaser may (in addition to all other rights) either demand immediate cure of Supplier's default, or Purchaser may obtain conforming goods elsewhere at Supplier's expense. In either case, Purchaser shall be entitled to recoup from Supplier all its loss, cost and expense incurred as a result of Supplier's default. (b) Purchaser may cancel this P.O. or any part of it at no penalty if prior to release for fabrication, or if said goods have been terminated from Purchaser's contract, in which case Purchaser will pay to Supplier such compensation as Purchaser receives from Owner or Supplier's behalf. If Purchaser terminates this P.O. for any reason, its maximum liability shall be the lesser of Supplier's cost to date of performing or the P.O.
- 10. Disputes:** Supplier agrees that the dispute resolution provisions of the contract between Purchaser and Owner, if any, are incorporated by this reference as part of this P.O. so as to be binding as to disputes between Supplier and Purchaser that involve, in whole or in part, questions of fact and/or law that are common to any dispute between Purchaser and Owner or others similarly bound to such dispute resolution procedures, and that all such disputes may be consolidated for hearing and resolution by the same arbitration or other tribunal specified in the contract between Purchaser and Owner. Such consolidation may be effected directly by Supplier, if permitted, or by Purchaser. Upon exhaustion of the dispute resolution above or if the dispute between Supplier and Purchaser does not fall within the conditions described above, Purchaser, at its sole option, has the right to elect resolution of all claims or disputes involving Purchaser, Supplier or other interested third parties by litigation in court, mediation and/or arbitration. If Purchaser elects to proceed with litigation in court, no action or proceeding shall be commenced or maintained except in the proper court where the project is located. If selected, mediation and arbitration will be conducted pursuant to the Construction Industry Rules of the American Arbitration Association. This P.O. shall be construed under the laws of the state where the project is located. If Supplier files suit to protect lien or bond rights, it agrees to stay such proceedings to allow for any non-judicial dispute resolution process to be completed. Subsequent to such proceedings, the parties agree that disputes between them will be resolved by the proper court where the project is located. If Supplier makes a claim of any nature, Supplier agrees to present such claim in writing, with full documentation therefore, to Purchaser within sufficient time for Purchaser to take the action required within the time limitations of the Contract Documents for asserting claims against Owner. Purchaser shall not be obligated to appeal from any decision, or to prosecute any claim on behalf of Supplier, and Purchaser may, at its option, abandon to Supplier any such claim by giving written notice to Supplier that Purchaser will no longer prosecute such claim. In such event, Supplier shall have the right to prosecute such claim in the name of Purchaser, but at Supplier's own cost and expense. It is the intent of Purchaser to resolve disputes as quickly, efficient and amicably as possible. To this end, Purchaser reserves the right to require a meeting with senior management of Supplier within ten (10) days of demand by Purchaser to resolve outstanding disputes. Both parties must commit to use their best faith efforts to resolve disputes, and meet again, as necessary, to facilitate this process. If the dispute has not been resolved within twenty (20) days of the first meeting, Supplier may proceed with its other remedies under this P.O. Nothing contained herein shall excuse Supplier from completion of the work in the manner provided in this P.O., nor shall the pendency of any dispute or arbitration proceeding excuse any interruption, deficiency, delay, default or noncompliance therewith.
- 11. Bond:** Purchaser at its option may require Supplier to give a bond for the faithful performances of this P.O., payable to Purchaser in amounts on a form and with a surety satisfactory to Purchaser.
- 12. Pricing:** The price appearing on the face of this Purchase Order is final for the materials to be provided. However, if the price is omitted on this P.O. and not otherwise agreed to in writing, then the price to apply hereto will be the prevailing market price at (a) time of order or (b) time of delivery, whichever is less, at the sole discretion of Purchaser.
- 13. Termination:** Purchaser by written notice to Supplier may at any time terminate and cancel this P.O. with respect to any work which remains undone and any materials which remain undelivered on the date of such notice. In the event of such cancellation, Supplier shall promptly stop all deliveries and work called for by this P.O. and Purchaser's responsibility to Supplier is limited to paying Supplier for all items and work so cancelled for which Owner pays Purchaser. Other than as specifically provided for herein, Supplier shall not be entitled to claim or recover damages or loss of profits from Purchaser on account of any such cancellation, delays suffered by Supplier, irrespective of cause, or the rejection by Purchaser or Owner as provided herein of any work performed or materials shipped under this P.O.
- 14. Payment:** Supplier shall be paid by Purchaser as the work progresses, to the extent work of Purchaser utilizing such materials supplied hereunder shall be approved in periodic estimates of Owner's representative and be paid by Owner to Purchaser. Purchaser at his option and until he shall receive final payment

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may retain the same percent of each estimate as Owner retains from Purchaser and, if Supplier is in default of any terms or conditions hereof, Purchaser may retain any and all sums otherwise due Supplier until such default has been rectified. Final payment shall be made after Supplier has satisfied Purchaser of its compliance with all the terms and conditions hereof, and if so satisfied, twenty days after Purchaser has received final payment from Owner. Invoices received after the 25th of the month will be included in the following month's billing.

15. Assignment: Supplier may not assign or transfer this P.O. or any part hereof without the prior written consent of Purchaser. Supplier will reimburse Purchaser for any legal or other expenses incurred while enforcing its rights under this P.O.

16. Operation and Maintenance Instructions: Supplier shall provide the required number of complete copies of operation and maintenance instructions and parts lists as specified in the Contract Documents prior to payment in excess of 50% of the agreed P.O. price. Failure to comply with this requirement will be considered just cause for withholding payment of invoice.

17. Agreement to Terms: Supplier stipulates and agrees that if Supplier supplies materials for the Project, Supplier accepts all terms and conditions of this Purchase Order, even if Supplier does not sign this Agreement.

18. Insurance Requirements: Supplier shall procure, maintain and carry, at its sole cost, in accordance with and/or until completion of this Purchase Order and all applicable warranty periods, all insurance, with identical limits of liability, and scope of coverages, as required per the amounts as set forth below or higher amounts if required of Purchaser in the prime contract. Provided, however, that all coverages obtained by Supplier shall be for the occurrence and not claims made policies. Insurance Certificates, written on the proper ACORD form (Certificate of Insurance), must be received by Purchaser prior to Supplier providing the materials and work required of it, and a copy of the additional insured endorsement, must be received by Purchaser prior to any payment by Purchaser or delivery of goods. All insurance is to be issued by companies and with liability limits acceptable to Purchaser. Each insurance company's rating as shown in the latest Best's Key Rating shall be no less than A- or as otherwise indicated. All Insurance Certificates will state that all coverages are in effect and will not be cancelled without thirty (30) days prior written notice to Purchaser. Purchaser reserves the right to review certified copies of any and all insurance policies to which this Subcontract is applicable. If Subcontractor should subcontract any of this work to a third party, Subcontractor shall see to it that third party maintains such insurance and shall furnish evidence thereof to Purchaser. The requirements, procurement and carrying of the required insurance shall not limit any of the Subcontractors obligations or liability under the subcontract with Purchaser or as a matter of law. Such insurance shall include the following terms and conditions: (a) Severability of Interest: All insurance carried shall be endorsed to provide that, inasmuch as this policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. (b) Business Automobile Liability Insurance: Subcontractor shall maintain automobile insurance, including contractual liabilities insuring the indemnities set forth in this Subcontract covering all owned, non-owned and hired automobiles used in connection with the services or other work hereunder and shall have minimum bodily injury and property damage limits of \$1,000,000 combined single limit per occurrence and shall include Purchaser, Owner, etc. as additional insured. An MCS-90 endorsement shall be procured when applicable. (c) Workers' Compensation and Employer's Liability Insurance: Subcontractor shall maintain Workers' Compensation Insurance to cover the statutory limits of the Workers' Compensation laws of the state in which any work is to be performed and when applicable to Federal Laws, Voluntary Compensation and Employer's Liability (including occupational disease) coverage with limits not less than \$500,000 each accident/\$500,000 each employee/\$500,000 policy limit. (d) Commercial General Liability Insurance: Subcontractor shall obtain and maintain Commercial General Liability Insurance, on an occurrence form for the hazards of (i) construction operation, (ii) Sub-Subcontractors and independent contractors, (iii) products and completed operations (with completed operations to remain in force for two years following project completion), (iv) explosion and collapse, and (v) contractual liability insuring the indemnities set forth in the Subcontract. Minimum limits of \$1,000,000 per occurrence, 2,000,000 aggregate per project and \$2,000,000 products and completed operations aggregate will be maintained and ISO endorsement form CG 2417 pertaining to railroad work will apply when applicable. (e) Excess Liability: Subcontractor shall maintain Excess Liability coverage on an umbrella form with minimum limits of \$2,000,000 per occurrence and \$2,000,000 aggregate. (f) Waiver of Subrogation: All insurance policies supplied shall include a waiver of any right of subrogation of the insurers thereunder against Purchaser and all its assigns, parent companies, subsidiaries, affiliates, employees, insurers and underwriters. (g) Additional Insureds: Subcontractor furnished insurance (except Workers' Compensation Insurance) shall include Purchaser and all its assigns, subsidiaries and affiliates and any others as may be required by the Prime Contract as additional insureds on a primary, non-contributory basis and shall include products and completed operations coverage for the additional insured(s) under the General Liability, Auto and Umbrella Policies. (h) No Limitation of Liability: The required coverages referred to and set forth herein shall in no way affect, nor are they intended as a limitation on, Subcontractor's liability with respect to its performance and liability of this Subcontract. (i) Sub-Subcontractor's Insurance: Subcontractor shall require all those Sub-Subcontractors providing equipment, materials or services directly to Subcontractor in connection with this Subcontract to obtain, maintain and keep in force coverages in accordance with the insurance requirements set forth herein during the time they are involved in performance of services or other work hereunder. Subcontractor shall obtain Certificates of Insurance evidencing such coverage and provide Purchaser with such certificates. Subcontractor shall not be excused from its obligations to cause such Sub-Subcontractor to meet the insurance coverage requirements set forth under this section unless Subcontractor shall have obtained in writing from Purchaser a waiver, which shall be effective only as to such requirements for such Sub-Subcontractor specifically identified therein. (j) Habitational Coverage: If the scope-of-work so indicates, there shall be no habitational exclusions indicated on the policies. This includes but is not limited to apartments, town homes and/or condominiums. (k) Professional Liability: If the Subcontractor has assumed any design responsibilities as indicated in this Subcontract or through the Plans or Specifications, then the Subcontractor shall provide Professional Liability (errors and omissions) Insurance in the minimum amount of \$1,000,000. (l) Per Project Aggregate: General Liability and Umbrella policies shall be endorsed to include a per project aggregate. Subcontractor shall protect, defend and save Purchaser harmless from any liability, including costs and expenses, including attorney's fees, for, or on account of, any patented or unpatented invention, article or appliance manufactured or used in the performance of this Subcontract, including their use by Owner and further agrees to pay all loss and expense incurred by Purchaser by reason of any such claims or suits.

19. Where applicable, the provisions of 41 CFR 60-1.4, 60-250.4 and 60-741.4 are hereby incorporated by reference, and Seller agrees to adhere to said regulations.

20. Equal Employment Opportunity Clause: As applicable, Executive Order 11246 (as amended) Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (as amended), Section 503 of the Rehabilitation Act of 1973 (as amended), and Section 61-250.5(a) and Public Law 95-507 contain required contract clauses relative to equal employment opportunity and are incorporated herein by specific reference at 41 C.F.R. 60-1.4(a,d), 60-4.3, 60-250.5(a), 60-300.5(a) and 60-741.5(a). Executive Order 13495 contains required contract clause relative to "Nondisplacement of Qualified Workers" and has been incorporated herein by specific reference. Executive Order 13496 contains required contract clause regarding notice of employee rights under the Federal labor laws including the National Labor Relations Act and has been incorporated herein by specific reference to 29 C.F.R. Part 471, Appendix A to Subpart A. FAR 52.222-54, Employment Eligibility Verification, contains required contract clause regarding use of E-Verify on new hires and employees assigned to the contract and has been incorporated herein by specific reference. Please be advised that, to the extent applicable, your company is required to comply with these provisions.