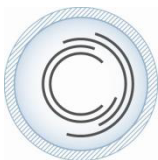




ConsensusDocs® 702.1
TERMS AND CONDITIONS FOR
PURCHASE ORDER FOR COMMODITY GOODS

The following terms and conditions are incorporated into all ConsensusDocs Standard Purchase Orders for Commodity Goods issued by Frank Millard and Company, Inc. All capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Purchase Order.

1. **EXHIBITS AND DOCUMENTS** All attachments and other data issued with the ConsensusDocs Standard Purchase Order for Commodity Goods are incorporated and made a part of this Agreement.
2. **ACCEPTANCE OF AGREEMENT** Acceptance of this Agreement shall be limited to the terms and conditions stated herein, and any additional or different terms, conditions, or instructions proposed by either party are unenforceable and of no effect unless expressly assented to in writing by both Parties. This Agreement shall be binding upon execution and delivery by Buyer and acceptance by Seller. Subject to state and local laws, "delivery" of this Agreement may be made by sending a copy via electronic correspondence, facsimile, overnight delivery by a nationally recognized carrier, by regular U.S. Mail or hand-delivery to the addressees or contact information set forth in Article 1 of the Purchase Order. Acceptance of this Agreement by Seller shall occur when (a) Seller confirms acceptance of the Agreement in writing, or (b) when Seller delivers to Buyer any of the materials or equipment or renders for Buyer any of the incidental services ordered.
3. **EXTENT OF AGREEMENT** Any incidental services performed by Seller under this Agreement shall be governed by the terms of this Agreement. Nothing in this Agreement shall be construed to create a contractual relationship between persons or entities other than Buyer and Seller. Except as specifically provided in this Agreement, this Agreement, including the documents attached or referenced in Article 1 of the Purchase Order and Article 5 of the Purchase Order, are exclusively for the benefit of the Parties and not for the benefit of any third-party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.
4. **CHANGES** Upon reasonable notice to Seller, Buyer shall have the right to make changes in the items, quantities or other information incorporated in this Agreement, methods of shipment or packing, place of delivery, and time of delivery. The Price and Delivery Schedule, if any, shall be equitably adjusted if and to the extent necessary to reflect the impact of any such changes, and this Agreement shall be modified in writing accordingly.
5. **SUBMITTALS** Along with the delivery of materials or equipment, at no additional cost, Seller shall promptly submit to Buyer any and all available manufacturer's warranties, product data and literature relating to such materials or equipment.
6. **SCHEDULE** Time is of the essence of this Purchase Order. The Parties shall coordinate with one another with respect to the timing and delivery of the materials and equipment pursuant to this Agreement. In the event the delivery schedule agreed to by the Parties cannot be met for any reason, Seller shall notify Buyer as soon as reasonably practical as to such delay.



7. **FORCE MAJEURE** If Seller is delayed by any cause beyond Seller's control, Seller shall be entitled to an equitable extension of time. Examples of causes beyond Seller's control include, but are not limited to, the following: acts or omissions of Buyer, Owner, or Design Professional; changes in the required materials and equipment; shipping delays not reasonably foreseeable; labor disputes not involving Seller; general labor disputes impacting the Project; fire; terrorism; epidemics; adverse governmental actions; unavoidable accidents or circumstances; adverse weather conditions not reasonably anticipated; encountering hazardous materials; concealed or unknown conditions; delay authorized by Buyer pending dispute resolution; and suspension of the Project by Buyer.

8. **SHIPPING** Shipping instructions furnished by Buyer shall be strictly complied with and shall be considered a part of this Agreement. Seller shall endeavor to provide Buyer at least twenty-four (24) hours notice prior to the delivery of any materials or equipment. Failure to give at least twenty-four (24) hours notice prior to delivery of materials or equipment may result in offloading delays or rejection of materials or equipment at the delivery site. Any provisions for delivery of materials or equipment by installment shall not be construed as making the obligations of either Party severable. Risk of loss or damage shall be upon Seller until the materials or equipment are physically delivered to Buyer at the Project or other authorized destination, unless otherwise agreed to in writing and signed by Buyer, or if covered by project all risk or equivalent insurance.

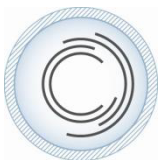
9. **SAFETY DATA SHEETS (SDS)** Seller shall submit to Buyer all Safety Data Sheets, if applicable and as required by Law, for materials or substances sold to Buyer.

10. **INSPECTION** Except as otherwise provided in this Agreement, all shipments shall be subject to final inspection by Buyer after receipt by Buyer at destination. Shipments shall be accompanied by detailed delivery tickets to assist Buyer in its inspection. Buyer must inspect all materials and equipment and advise Seller of any visible damage or shortfalls within three (3) business days of delivery; otherwise such materials and equipment will be deemed to be accepted. Should Buyer discover any damage or shortfalls, Buyer shall promptly report them to Seller. Materials or equipment not accepted due to nonconformance with the requirements of this Agreement shall, at Buyer's option, be (a) returned to Seller at Seller's expense; (b) exchanged for replacement products; or (c) repaired at Seller's expense to the extent that such repairs do not exceed the replacement cost of such materials or equipment. Incorporation of the materials or equipment into the Project shall constitute acceptance by Buyer of such materials or equipment and incidental services, if any, subject to Seller's warranty obligations. Payment for any materials or equipment shall not constitute acceptance. Notwithstanding the foregoing, Buyer shall have the right to reject and refuse acceptance of materials or equipment that are not in accordance with project specifications or information identified in Article 2 of the Purchase Order, Article 1 of this Agreement, or Seller's warranty, if any, as provided pursuant to Article 13 of this Agreement.

11. **PERFORMANCE** Supplier's Performance is monitored via incoming inspection and the use of supplier corrective action process. Performance information will be shared with suppliers only upon request. Suppliers are responsible to periodically review Frank Millard & Co., Inc. website for changes / additions to Standard Purchase Order Terms and Conditions: www.frankmillard.com

12. **SUSPENSION FOR CONVENIENCE** Notwithstanding Article 7, should Buyer order Seller in writing to suspend, delay, or interrupt the performance of this Agreement for such period of time as may be determined to be appropriate for the convenience of the Owner and not due to any act or omission of Seller, then Seller shall immediately suspend, delay, or interrupt as ordered by Buyer. In accordance with Article 4, the Price and Delivery Schedule, if applicable, shall be equitably adjusted by Change Order for the documented loss, cost, expense and delay resulting from any such suspension.

12.1. **TERMINATION FOR DEFAULT** Should Seller fail to deliver items and materials or perform the incidental services required within the time provided under this Agreement or any mutually agreed upon



extension of time, or should Seller fail to perform any of the provisions of this Agreement or fail to make progress so as to endanger performance of this Agreement in accordance with its terms, Seller may be deemed in default and Buyer may terminate this Agreement for default by providing written notice of the same. Nothing in this subsection shall preclude Seller from asserting its rights under Article 19. The rights and remedies of Buyer provided in this subsection shall not be exclusive and are in addition to any other rights and remedies provided by Law or under this Agreement.

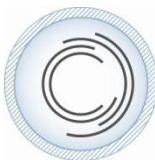
12.2. SELLER'S RIGHT TO TERMINATE Upon ten (10) days written notice, Seller may terminate this Agreement if (a) Buyer fails to submit payment for the material, equipment or incidental services in a timely manner in accordance with the terms of this Agreement; or (b) Buyer fails to take delivery of the material, equipment, or incidental services through no fault of Seller if delivery attempt is made in accordance with the terms of this Agreement. Seller shall be entitled to recover all material, equipment, or incidental services as identified in Article 2 of the Purchase Order and for any documented loss, cost, or expense in connection with such materials, equipment, or incidental services.

12.3. TERMINATION FOR CONVENIENCE Buyer may at any time, with ten (10) days written notice to Seller, terminate this Agreement for the convenience of Buyer. In the event of such termination for convenience, Buyer shall pay Seller for actual and reasonable costs of furnishing materials or equipment to the date of termination. In the event any termination of Seller for default under section 12.1 is later determined to have been improper, the termination shall automatically be deemed a termination for convenience, and Seller shall be limited in its recovery strictly to the compensation provided for in this article.

13. WARRANTY Seller assigns to Buyer or Designee any applicable vendor or manufacturer warranties or remedies. In addition to the foregoing warranties, Seller hereby expressly warrants that all materials or equipment covered by this Agreement shall be (a) finished and sufficient for the intended purpose for which such materials or equipment was manufactured; and (b) free and clear of all liens. In the event of a breach of such warranties, Seller shall (a) refund the Price, (b) repair, or (c) replace, at Seller's option and expense, any defective materials or equipment. Seller's warranty excludes remedies for defects or damages caused by ordinary wear and tear, use for a purpose for which the materials or equipment were not specified, improper or insufficient installation, operation, maintenance, storage, or abuse, and modification not performed by Seller. **THE WARRANTIES IN THIS SECTION ARE EXCLUSIVE, AND SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES.**

14. PAYMENT AND LIENS Payment for conforming material, equipment or incidental services will be made within ten (10) days of receipt of payment by owner. Frank Millard and Company, Inc. job number and purchase order number must appear on all invoices. Progress and final invoices are due to Frank Millard and Company, Inc. no later than the twentieth (20th) day of each month. If and when requested by Buyer, Seller shall promptly provide affidavits that all of Seller's suppliers have been paid, and a release of all liens, either by Seller or Seller's supplier, and claims in a form reasonably acceptable to Seller and Buyer. Such releases or waivers of lien may be conditioned upon payment. In no event shall Seller be required to sign an unconditional waiver of lien or claim, either partial or final, for an amount in excess of what Seller has been paid or prior to receiving payment. Prior to final payment, Seller shall provide to Buyer copies of warranties, applicable manuals, and all other close-out documents required for the materials or equipment by this Agreement.

15. WAIVER OF CONSEQUENTIAL DAMAGES Buyer and Seller waive claims against each other for consequential or special damages arising out of or relating to this Agreement; however, this waiver shall not apply to any claim for reimbursement or indemnification for any consequential damages one Party was required to pay to a third party as a result of an act or omission of the other party or their employees or agents.



16. **ASSIGNMENT** Except for assignment of proceeds, no assignment of this Agreement or of any right, obligation, or delegation of duty under this Agreement shall be made without the written consent of the other Party or their duly authorized agent. Any attempted assignment or delegation without such consent shall be void.

17. **WAIVER** Either Party's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege provided in this Agreement, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, or any right or privilege.

18. **GOVERNING LAW** This Agreement shall be governed by the Law in effect at the location of the Project.

19. DISPUTE MITIGATION AND RESOLUTION

19.1. **WORK CONTINUANCE AND PAYMENT** Unless otherwise agreed in writing, except for nonpayment by Buyer, Seller shall continue to provide materials, equipment, and incidental services as identified in Article 2 of the Purchase Order, and maintain the Delivery Schedule, if applicable, during any dispute mitigation or resolution proceedings. If Seller continues to perform, Buyer shall continue to make payments in accordance with this Agreement.

19.2. **DIRECT DISCUSSIONS** If a dispute arises out of, or relates to, this Agreement or its breach, the Parties shall endeavor to settle the dispute in a cooperative manner, including resolving minor nonconformities that would give rise to economic waste. Within five (5) business days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions, shall conduct direct discussions and make a good faith effort to resolve such dispute.

19.3. **BINDING DISPUTE RESOLUTION** If the matter is unresolved after direct discussions, the Parties shall submit the matter to the binding dispute resolution procedure designated below:

☒ Arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties.

☐ Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

19.4. **DISPUTE RESOLUTION COSTS** The costs of any binding dispute resolution procedures shall be borne by the non-prevailing Party, including reasonable attorneys' fees, as determined by the adjudicator of the dispute.

19.5. **VENUE** The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.

19.6. **MULTIPARTY PROCEEDING** All Parties necessary to resolve a matter shall be parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the material, equipment, or incidental services, if any, as identified in Article 2 of the Purchase Order to provide for the joinder or consolidation of such dispute resolution procedures.

20. **JOINT DRAFTING** The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

END OF DOCUMENT.

