



ADDITIONAL TERMS AND CONDITIONS FOR COMMERCIAL CONSTRUCTION ORDERS

In addition to the terms and conditions of GA Form 1603, "Terms and Conditions for Commercial Orders" (except for clauses 3, 18, 20, 22, 46, 47, 48 and 49 set forth in those Terms and Conditions), the following clauses shall also apply to this construction order.

1. DEFINITIONS.

"Contract Documents" are enumerated in the Order between Buyer and Seller and consist of the "Terms and Conditions for Commercial Orders", these "Additional Terms and Conditions for Commercial Construction Orders", Drawings, Specifications, and other documents specifically identified or referenced in the Order. Unless specifically stated in the Order, the Contract Documents do not include the invitation to bid, request for proposal, request for quotation, or the Seller's bid or proposal.

"Drawings" means the graphic and pictorial portions of the Order Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

"Order" means the purchase order or subcontract issued by Buyer to Seller to which these "Additional Terms and Conditions for Commercial Construction Orders" and the accompanying "Terms and Conditions for Commercial Orders" are affixed, including all Contract Documents attendant thereto.

"Project" means the total construction of which the Work performed under the Order may be the whole or a part and which may include construction by the Buyer and by separate contractors or subcontractors under contract to Buyer.

"Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

"Work" means the construction and services required by the Order, whether completed or partially completed, and includes all labor, material, equipment and services provided or to be provided by Seller to fulfill Seller's obligations under the Order. The Work may constitute the whole or part of the Project.

2. DIFFERING SITE CONDITION.

(a) Seller shall promptly, and before such conditions are disturbed, notify Buyer in writing of: (1) subsurface or latent physical conditions at the job site differing materially from those indicated in the Order, or (2) unknown physical conditions at the job site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work provided for in the Order. Buyer shall promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in Seller's cost of, or the time required for, performance of any part of the Work under the Order, an equitable adjustment shall be made and the Order modified in writing accordingly.

(b) No claim of Seller under subclause 2(a) shall be allowed unless Seller has given the notice required in subclause 2(a) above.

(c) No claim by Seller for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Order.

3. SPECIFICATIONS AND DRAWINGS. Seller shall keep, on the job site, a copy of the Drawings and Specifications and shall at all times give Buyer access thereto. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. In case of discrepancy either in the Drawings or in the Specifications, the matter shall be promptly submitted to Buyer, who shall promptly make a determination in writing. Any adjustment by Seller without such a determination shall be at its own risk and expense. Buyer shall furnish from time to time such detailed Drawings and other information as it may consider necessary, unless otherwise provided in the Order.

4. SHOP DRAWINGS.

(a) The term "shop drawings" includes drawings, descriptive literature, performance and test data, and similar materials furnished by Seller to explain in detail specific portions of the Work required by the Order.

(b) If the Order requires shop drawings, Seller shall coordinate all shop drawings and review them for accuracy, completeness, and compliance with Order requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Buyer without evidence of Seller's approval may be returned for resubmission. Buyer will review the shop drawings for general conformance with the design intent only, and indicate its approval or disapproval of the shop drawings and if it does not approve them as submitted it shall indicate its reasons therefor. Any Work done prior to such approval shall be at Seller's risk. Approval by Buyer shall not relieve Seller from responsibility for any errors or omissions in such shop drawings, nor from responsibility for complying with the requirements of the Order, except with respect to variations described and approved in accordance with subclause 4(c) below.

(c) If shop drawings show variations from the Order requirements, Seller shall describe such variations in writing, separate from the shop drawings, at the time of submission. If Buyer approves any such variation(s), it shall issue an appropriate Order modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

5. LIENS AND CLAIMS. Seller shall protect and defend Buyer, and the land upon which the Work is to be performed, and all improvements, structures, equipment, machinery, and other property now or hereafter placed thereupon from all liens, charges, or encumbrance arising out of or in connection with the performance by Seller of the Work to be performed hereunder. Buyer shall, as a condition precedent to any payment hereunder, require Seller to submit, as a part of any payment request, complete waivers and releases of any and all claims of any persons or entities performing Work and/or providing material, equipment or services to the Project for amounts due through the immediately preceding payment request. In addition, such releases must be submitted covering all such claims as a condition precedent to final payment.

6. MATERIAL AND WORKMANSHIP.

(a) Unless otherwise specifically provided in the Order, all equipment, material, and articles incorporated in the Work covered by the Order are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in the Order, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and Seller may, with Buyer's written approval, use any equipment, material, article, or process which, in the judgment of Buyer, is equal to that named.

(b) All Work under the Order shall be performed in a skillful and workmanlike manner.

7. REQUIREMENTS AND PROVISIONS AT THE JOB SITE.

(a) **Seller's Representatives.** Seller shall be represented in person at all times at the job site and during the progress of the Work or by a competent superintendent satisfactory to Buyer. Seller's representative shall have authority to act for Seller in all matters concerning performance of the Work.

(b) **Seller's Personnel.** Buyer may require Seller to remove from all connection with the Work such Seller personnel (including agents and employees of Seller and its subcontractors and vendors) as Buyer deems incompetent, unsafe, careless, insubordinate, or otherwise objectionable, or whose continued engagement in connection with the Work is deemed by Buyer to be contrary to the public interest.

(c) **Space at Job Site.** Seller shall be allowed reasonable space at the job site as indicated on the Contract Documents and access thereto and shall confine its operations to the space assigned. The Work shall be done without interference with the ordinary use of streets, fairways, and passages, and Seller shall cooperate with Buyer, Buyer's other sellers, subcontractors, or customers as may be required by the circumstances or as directed by Buyer. Seller shall, in addition, take all measures to adequately protect adjacent property.

(d) **Protective Measures.** Seller shall protect the materials and Work from loss, deterioration, and damage during construction and shall store and secure flammable material from fire and shall remove oily rags, waste, and refuse from job site buildings each night, and during cold weather shall furnish all heat necessary for the proper conduct of the Work. Seller shall provide and maintain all temporary walkways, roadways, trench covers, barricades, colored lights, danger signals, signage, and other devices necessary to provide for safety and traffic around the job site. Seller shall ensure that the job site buildings and premises are kept free at all times of debris and rubbish caused by the Work.

(e) **Safety Measures.** Seller shall take all reasonable steps to prevent injury to persons or property in performance of the Order. Seller shall protect the materials and Work from loss, deterioration, and damage during construction. If Work is to be performed on Buyer's premises, clause 13 entitled "Safety Regulations" shall apply in addition to this clause 7.

(f) **Temporary Buildings.** Seller shall erect, remove and return the job site to original condition, at its own expense, such temporary storage sheds and offices as are necessary for the Work. All such temporary structures shall be subject to the approval of Buyer.

(g) **Utility Connections.** Unless otherwise provided in the Order, Seller shall make all connections including meters to

existing utility mains for exterior and interior electric, gas, water, sewer, and air sources only at hours approved by Buyer. Seller shall give five (5) days notice in writing of such intention. No overtime for such connections will be paid for by Buyer unless approved in writing by Buyer in advance. Buyer will pay for all utilities required by Seller in its performance of Work at the job site.

(h) **Lines, Levels, and Measurements.** Seller shall assume full responsibility for the accuracy of all lines, levels, and measurements and their relation to bench marks, property lines, reference lines, and to the Project and to the operations of Buyer and subcontractors of Buyer. In all cases where dimensions are governed by conditions already established, the responsibility for correct knowledge of such conditions shall rest entirely on Seller. No variation from specified lines or levels or measurements shall be made except on the written authority of Buyer.

(i) **Regulations and Safety Precautions.** All agents and employees of Seller and its subcontractors and vendors shall be subject to the reasonable rules and regulations at any time promulgated by Buyer for the safe, orderly, and efficient conduct of operations at job site. Seller shall enforce observation of such rules and regulations and shall maintain discipline and good order among its employees, agents, subcontractors and vendors. Agents and employees of Seller or of any of its subcontractors or vendors engaged at the job site or visiting the job site for any purpose shall be subject to such security regulations as may be in force on the Project. Seller's employees, agents, subcontractors and vendors during such times as they are on the job site shall abide by the same rules and regulations with respect to fire protection and safety that govern Buyer's employees.

(j) **Cleanup.** Seller shall be responsible to maintain a safe and clean work site and will perform cleanups when requested by Buyer. Upon completion of the Work, Seller shall remove all its equipment, tools, materials, and other articles from the job site. Should Seller fail to promptly remove such items, then Buyer, without waiver of such other rights as it may have, may treat the same as abandoned property. Seller shall also sweep all floors broom-clean, clean all exterior brickwork, windows, and lights, and remove all rubbish from the job site. If Seller fails to clean up as provided herein Buyer may do so at Seller's expense.

(k) **Telephone Service.** Seller may install and maintain a land line for a telephone for its convenience at the job site, and at the completion of the Order, it shall remove the telephone and all wiring installed for its use. All charges in connection therewith shall be paid by Seller.

(l) **Sanitary Conveniences.**
(i) Seller shall provide, on the job site, a suitable temporary toilet enclosure for the use of all those connected with the Work, and shall maintain it in a sanitary condition. The facilities shall comply with all State regulations. The toilet shall be suitably screened.

(ii) Upon completion of the Work, subject to instructions of Buyer, Seller shall remove all temporary toilet facilities.

8. PERMITS AND RESPONSIBILITIES. If required by Buyer, Seller shall be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations in connection with the prosecution of the Work. Seller shall be similarly responsible for all damages to persons or property that occur as a result of its fault or negligence. Seller shall take proper safety and health precautions to protect the Work, the worker, the public, and the property of Buyer and others.

Seller shall also be responsible for all materials delivered and Work performed until completion and acceptance of all Work to be performed under the Order.

9. BONDS.

(a) If required by Buyer, before commencing the Work, and in any event within five (5) days after the effective date of the Order, Seller shall furnish a performance and/or a payment bond written by sureties acceptable to Buyer, each in the penal amount of the price of the Order. If Seller is unable to produce the Bond(s), Buyer may terminate the Order at no cost.

(b) If any surety upon any bond furnished in connection with the Order becomes unacceptable to Buyer or if any such surety fails to furnish reports as to its financial condition from time to time as requested by Buyer, Seller shall promptly furnish such additional security as may be required from time to time to protect the interest of Buyer and of persons supplying labor or materials in the prosecution of the Work contemplated by the Order.

10. INSURANCE.

(a) Liability.

(i) Seller shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the job site is located such insurance as will protect Buyer from all claims arising out of or resulting from Seller's Work under the Order, whether such Work is performed by Seller or by its subcontractors or by anyone directly or indirectly employed or engaged by either Seller or its subcontractors or for whose acts any of them may be liable. Seller must maintain the following insurance coverage:

(1) Workman's Compensation insurance in the amounts required by the laws of the jurisdiction in which the Work is to be performed.

(2) Employer's Liability insurance of not less than \$1,000,000 for any one person in any one accident and any one person for disease.

(3) Commercial General Liability Insurance (including Automobile Liability Insurance covering owned, hired, and non-owned automobiles) covering, but not limited to, claims for damages because of bodily injury and property damage, including all loss of use, with combined per occurrence limits (primary and excess layers) of liability of not less than \$2,000,000 or higher if required by Buyer. All CGL insurance must be purchased from a company or companies with an A.M. Best rating of A-; VII or better. All CGL insurance must name Buyer as an additional insured on the policy(ies) for ongoing and completed operations, must include completed operations coverage, and must be issued on standard ISO form CG 00 01 10 01, or its equivalent. Such insurance must contain a separation of insured's provision. Coverage must be issued on an occurrence form and remain in force for three (3) years after completion of the Project.

(ii) If any part of the Work is to be subcontracted, Seller shall require each subcontractor to maintain insurance of the kinds and in the amounts set forth above, except as otherwise approved in writing by Buyer.

(iii) Seller shall keep the herein-described insurance in full force and effect until the Work is completed, or longer as may be required by the Order. The policies shall provide that they shall not be subject to cancellation or material change in coverage until thirty (30) days after notice is

received by Buyer of Seller's intention to cancel or change the insurance. Certified copies of such policies, or certificates evidencing such insurance, shall be filed with Buyer before Work is started or before such later date as Buyer shall agree to in writing. Insurance shall be obtained only from insurance companies licensed to do business in the jurisdiction in which the Work is to be performed.

(b) **Property Insurance.** Seller shall provide and maintain Builder's Risk Property Insurance on any Project associated with the Order on an "all-risk" or equivalent policy form for the full value of the Work, including Transit Coverage, on a full replacement cost basis. Such insurance shall not include a co-insurance provision. Buyer shall not be responsible for loss or damage of Seller's tools or equipment. Such insurance shall be maintained until final payment or until no beneficiary has an insurable interest in any Project associated with the Order, whichever is later. This insurance shall include the interests of Buyer, Seller, Buyer's landlord and associated lenders. Such insurance shall insure against, without limitation, the perils of fire (with extended coverage), theft, vandalism, malicious mischief, collapse, rain, water intrusion, windstorm, false work, and any other coverage required by Buyer, including earthquake and flood, if required by Buyer's landlord.

11. LABOR.

(a) Whenever an actual or potential labor dispute is delaying or threatens to delay the performance of the Work, Seller shall immediately notify Buyer in writing stating all relevant information concerning the dispute and its background.

(b) Seller, together with its subcontractors and vendors, shall pay all wages and salaries of all supervisory, administrative, and construction personnel, as well as all taxes, insurance, contributions, assessments, and benefits imposed by law, collective bargaining agreements or employment contracts, as well as any customary benefits such as health and medical benefits, vacation pay, pension contributions, and all other such obligations lawfully imposed on any employer of labor, and all other taxes and benefits of every kind and description whatsoever, all at its own expense, and agrees to indemnify Buyer against any liability for such obligations and taxes.

12. INDEMNITIES.

(a) Except as otherwise provided in the Order, Seller agrees to indemnify and hold harmless Buyer and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any patent arising out of the performance of the Order or out of use or disposal by or for the account of Buyer of supplies furnished or Work performed hereunder.

(b) In addition, to the fullest extent permitted by law, Seller agrees to indemnify and hold Buyer and its officers, agents, and employees harmless from and against any claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or related to Seller's performance under the Order for losses or damage to property, equipment, or materials or for bodily injury, sickness, disease, or death to any person, caused in whole or part by the fault or negligence of Seller or anyone for whose acts Seller is responsible. Seller further agrees to indemnify Buyer against all claims, demands, and causes of action, suits, and litigation brought against Buyer on account of any obligation which Seller is bound for hereunder. The obligations set forth in this subclause 12(b) are in addition to, and shall not negate, abridge or otherwise reduce, any rights of Buyer which would otherwise exist.

(c) The rights created by this clause 12 shall survive the termination of the Order.

13. SAFETY REGULATIONS. The following safety instructions shall govern the conduct and operations of Seller, its agents, employees, subcontractors and vendors at the job site owned or leased by Buyer. Seller, its agents, employees, subcontractors and vendors must adhere to Buyer's Environmental Health and Safety instructions. Failure to conform to the regulations may be cause for the termination of Work operations.

(a) **Industrial Security.** All Buyer and Government security regulations must be complied with by all staff of Seller, its agents, subcontractors and vendors. Seller shall make arrangements for clearance requirements by an authorized representative of Buyer's Purchasing Department (as coordinated with Buyer's Security Department).

(b) **Operations and Parking of Vehicles.** Seller agrees to comply with Buyer policies and procedures for operation and parking of vehicles. Posted speed limits on Buyer's premises must be respected. After unloading, Seller, its agents, employees, subcontractors and vendors must park vehicles in non-reserved sections of Buyer parking lots or job site areas designated by Buyer's Security Department or Facilities Department, as applicable.

(c) **Health Physics.** Seller, its agents, employees, subcontractors and vendors working in a controlled area must be listed on a Buyer's radiological work permit. Prior to beginning Work, Seller must seek and receive instruction from the Health Physics group of Buyer's Licensing, Safety and Nuclear Compliance Department regarding the presence of sources of radiation exposure. Seller agrees to cause all of staff of Seller, its agents, subcontractors and vendors, to comply with these instructions.

(d) **Evacuation Procedures.** Seller, its agents, employees, subcontractors and vendors must adhere to evacuation procedures established for Buyer's personnel. Building evacuation is required on the sounding of a fire alarm, a continuous ringing bell, or the sounding of a Klaxon. Seller, its agents, employees, subcontractors and vendors must not reenter any building after evacuation until authorized by Buyer's emergency director or its designated representative.

(e) **Fire Protection.** Seller agrees to conduct all Work in a manner that promotes fire protection. Further, prior to the start of paint spraying, welding, burning, cutting, or heat operations, arrangements must be made through Buyer's authorized Facilities Department representative to obtain required permits and receive instructions, as applicable, from Buyer's Licensing, Safety and Nuclear Compliance Department. No internal combustion power equipment shall be fueled inside any facility. Equipment must not be fueled while in operation. All flammable liquids stored or left on the job site must be properly labeled and stored in an appropriate hazardous material storage container suitably secured so as to protect against unauthorized access.

(f) **Obstructions and Danger Areas.** Seller must maintain roadways, stairs, and other access or exit points free of obstructions. Seller must isolate by suitable barriers or warning devices furnished areas which may create hazard from falling material, arc welding flashes, or excavation. Before overhead Work is begun, the area must be secured and properly posted with warning signs furnished by Seller. If the hazard continues beyond the working day, the signs must be lighted. Seller, its agents, employees, subcontractors and vendors must wear hard hats when overhead Work is being performed.

(g) **Tools and Material.** All tools and equipment used by Seller, its agents, employees, subcontractors and vendors should be of an approved type and in good operating condition. Stored materials shall be filed or racked in a manner intended to prevent damage. If stored in a building equipped with sprinklers, material may not be placed within two (2) feet of the sprinkler heads. The maximum weight of material stored on floors or platforms shall not exceed the safe carrying capacity.

(h) **Housekeeping.** The job site must be maintained free of scrap and accumulated debris. Equipment left on the job site must be properly stored and secured. Debris and scrap may be accumulated in a location specified by Buyer's authorized Facilities Department representative but must be removed as required by Buyer's Facilities Department.

(i) **Compressed Gas Cylinders.** Compressed gas cylinders must be used and stored in an upright position and properly secured to prevent them from falling or being damaged during Work operations. All cylinders not in use must have valve protector caps in place. Use of compressed gas from cylinders must be through approved regulators.

(j) **Odor/Smoke Producing Work.** Seller shall provide notification and obtain authorization prior to starting any Work involving any solvents, epoxy/paint, adhesives, or other odor producing work. All such Work shall be performed during non-business hours. The job site must be well ventilated and all precautions shall be taken to thoroughly exhaust the job site. No additional costs for Work performed during non-business hours shall be paid for by Buyer unless approved by Buyer in writing in advance.

(k) **Noisy/Excessive Decibel Work.** Noise producing Work such as blasting, coring, concrete cutting, sandblasting, concrete demolition, shooting of track, etc. in occupied buildings shall be performed during non-business hours unless otherwise specified in the Order. No additional costs for Work performed during non-business hours shall be paid for by Buyer unless approved by Buyer in writing in advance.

(l) **Emergencies.** Any fire, accident, or injury shall be reported immediately to Buyer.

(m) **Subcontracts.** Seller shall include the provisions of this clause 13 in any subcontract covering Work for Buyer on Buyer's owned or leased premises.

14. PROGRESS PAYMENTS-FIRM FIXED PRICE ORDERS. If the Order is firm fixed price, Buyer will pay:

(a) the Order price upon completion and acceptance of the Work including required certifications and release of all claims, or:

(b) if milestone payments are specified in the Order, Buyer will, upon satisfactory completion of each milestone identified therein, make payments in accordance with the Order, or:

(c) if progress payments are specified in the Order, Buyer will make progress payments monthly as the Work proceeds, or at more frequent intervals as determined by Buyer, on estimates approved by Buyer. If requested by Buyer, Seller shall furnish a breakdown of the total Order price, showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining the amount of each progress payment. In the preparation of estimates, Buyer, at its discretion, may authorize material delivered on the job site and preparatory work done to be taken into consideration. Material delivered to Seller at

locations other than the job site may also be taken into consideration:

(i) if such consideration is specifically authorized by the Order and

(ii) if Seller furnishes satisfactory evidence that it has acquired title to such material and that the material will be utilized on the Work covered by the Order.

(1) In making each progress payment, ten percent (10%) of the payment amount shall be retained until final completion and acceptance of the Work under the Order. However, if Buyer, at any time after fifty percent (50%) of the Work has been completed, finds that satisfactory progress is being made, it may authorize any of the remaining progress payments to be made in full.

(2) All material and Work covered by progress payments made shall thereupon become the sole property of Buyer, but this provision shall not be construed as relieving Seller from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work, or as waiving the right of Buyer to require the fulfillment of all the terms of the Order.

(d) Upon receipt and approval of the final invoice, or the final milestone invoice, designated by Seller as the "Completion Invoice" and upon submittal by Seller of all appropriate releases of all claims against Buyer arising by virtue of the Order, Buyer shall pay to Seller the balance of allowable costs which have been withheld pursuant to this clause 14.

15. PROGRESS PAYMENTS-TIME AND MATERIAL ORDERS.

(a) If the Order is a Time and Material order, Seller shall keep daily records of the personnel on the job, hours worked, material used, and equipment rented, and shall obtain, on such records, the signature of Buyer's Facility Department representative on a daily basis.

(b) Payments shall be made to Seller as the Work progresses, but not more frequently than monthly in amounts approved by Buyer. Seller shall submit properly executed invoices in such reasonable form and detail as required by Buyer with a supporting statement of costs incurred for performance of the Order and claimed to constitute allowable costs. Seller shall maintain all accounting records relevant to the charges billed to Buyer for the Order, and shall afford Buyer's representatives access to, and permit them to audit and copy, such records for a period of five (5) years following final payment.

(c) In making each payment, ten percent (10%) of the payment amount shall be retained until final completion and acceptance of the Work under the Order. However, if Buyer, at any time after fifty percent (50%) of the Work has been completed, determines that satisfactory progress is being made, it may authorize any of the remaining payments to be made in full.

(d) Upon receipt and approval of the final invoice designated by Seller as the "Completion Invoice" and upon submittal by Seller of all appropriate releases of all claims against Buyer arising by virtue of the Order, Buyer shall pay to Seller the balance of allowable costs which has been withheld pursuant to clause 15.