



PURCHASE ORDER

Date: _____ **Purchase Order Number:** _____

Project: _____ **CGS Superintendent:** _____

Project Owner: _____ **CGS Project Manager:** _____

Project Address: _____ **Project Architect:** _____

SUMMARY OF TERMS

THIS PURCHASE ORDER is made as of the above date between CG Schmidt, Inc., 11777 West Lake Park Drive, Milwaukee, WI 53224 (“**CGS**”), and the following Supplier (“**Supplier**”):

Supplier Name:

Supplier’s Authorized Representative:

Address:

Telephone:

Fax:

Mobile:

E-mail:

regarding provision of the following items (“**Materials**”):

The Materials shall conform to the requirements of the Project general, supplemental and any special conditions; the Project design drawings, specifications and all addenda; all of the terms and conditions of the Agreement between CGS and Project Owner; and the Project Manual (collectively, the “**Contract Documents**”), and _____, which are incorporated by reference and have been made available to Supplier for its review.

Delivery Date and Location:

Purchase Order Amount (includes all sales, use, and other taxes, royalties, license fees and permits):

\$

Phase:

Invoice Submittal Date (to be received by CGS by): _____ day of each month

This Purchase Order is the parties’ integrated agreement and supersedes all prior bidding, proposals, conversations, negotiations, representations, and agreements, oral or written. The use of any form of sale memorandum or confirmation

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by Supplier does not create any agreement or obligation for CGS, and the terms and conditions of this Purchase Order and the Contract Documents always control.

PURCHASE ORDER TERMS AND CONDITIONS

1. **Contract Documents.** In the event of any inconsistencies between the terms of this Purchase Order and the terms of the other Contract Documents, within or between parts of the Contract Documents, or between the Contract Documents and applicable laws, statutes, ordinances, building codes, rules and regulations, Supplier shall provide the better quality or greater quantity of Materials and comply with or conform its Materials to the most stringent legal or contractual requirements.
2. **Submittals.** The Supplier shall, at its expense, make all field measurements necessary to prepare, and shall promptly furnish, all submittals, including shop drawings, product data, samples and any other information or certifications required by the Contract Documents, so as to cause no delay in the delivery of Materials or in the activities of CGS, the Project Architect, or other trades working on the Project. If resubmissions are necessary, all changes shall be clearly identified. No substitution shall be made in the Material depicted in a submittal unless permitted under the Contract Documents, and then only upon the Supplier first receiving all approvals required thereunder in writing for the substitution and after clearly noting on the submittal itself the change from Project requirements so substituted.
3. **Safety.** The Supplier shall comply with all local, state and federal safety laws and statutes, including, but not limited to, environmental, safety and shipping regulations, governing the Materials and will pay all fees, taxes, including sales and use taxes and expenses connected with such compliance. Supplier shall comply with all governmental right-to-know laws, including providing to CGS copies of all Safety Data Sheets (SDS) prior to shipment of Materials.
4. **Shipment.** The Purchase Order Amount includes prepaid transportation charges, including replacement cost insurance, unless otherwise expressly agreed to in writing between CGS and Supplier. Supplier shall meet the scheduled date(s) for delivery. CGS shall provide any special shipping instructions to the Supplier before the shipment date. Supplier will use the best means of shipment and routing consistent with the nature of the Materials shipped and the shipment schedule. Supplier's failure to make timely delivery constitutes a material breach and Supplier shall be liable for all loss, damage, cost, expense or charge incurred by CGS, including all reasonable attorneys' fees, resulting from delay in delivery of Supplier's Materials. Supplier assumes all risk of loss until receipt and acceptance of the Materials by CGS at the designated delivery destination. Title to the Materials shall pass to CGS upon receipt and acceptance of the Materials by CGS at the designated delivery destination. A minimum of twenty-four hour advance notice must be given for all deliveries. All deliveries must be made between the hours of 7:00 a.m. and 3:00 p.m., Monday through Friday. Deliveries not between these hours may be rejected at the option of CGS.
5. **Payment.** If billing on a monthly basis, Supplier's invoice must be submitted by the date identified in the Summary of Terms. CGS agrees that payment shall be made net thirty (30) days from the date of the invoice. If Supplier offers to CGS a discount of two percent (2%) or greater in exchange for payment made net ten (10) days from the date of the invoice, CGS shall endeavor to make all payments net ten (10) days from the date of the invoice. When invoices subject to a ten (10) day payment discount are not mailed on the date of shipment or are not accompanied by bills of lading, the discount period will begin on the day both the invoices and the bill of lading are received by CGS. Supplier's acceptance of final payment shall release CGS and its surety of all claims arising under this Purchase Order. If required by CGS, Supplier shall furnish lien or bond waivers and a release of claims on a form acceptable to CGS as a condition of payment. In the event of any overpayment, Supplier shall reimburse CGS after final quantities have been determined by CGS. CGS may withhold payments, in whole or in part: (a) for defective or damaged Materials, (b) as an offset against claims filed or asserted against CGS, the Project Owner, or the Project Architect by suppliers of labor, materials or equipment to Supplier, for Supplier's actual or alleged failure to pay amounts due to them, (c) for failure by Supplier to cure any default or to perform any term or condition of this Purchase Order, or (d) when there exists a reasonable doubt that the Supplier can complete the Purchase Order within the time required or for the balance of the Purchase Order Amount then unpaid. If Supplier cures or corrects all such foregoing conditions, CGS shall promptly pay any such withheld payments. All claims for money due from CGS shall be subject to setoff, deduction or backcharge by CGS for any claims arising out of this or any other transaction between CGS and Supplier, and for any payments made by CGS to suppliers of labor, materials or equipment to Supplier.
6. **Changes.** CGS may at any time make changes in the Materials, their quantity, packaging, time and place of delivery or method of transportation by providing notice to Supplier in writing. If any such change causes an increase or decrease in the Purchase Order amount or modifies time required for Supplier's performance, an equitable adjustment shall be made and the Purchase Order shall be modified in writing accordingly. If Supplier disagrees with any such adjustment, it shall give written notice to CGS within seven (7) days after receipt of the written change from CGS. Supplier shall not suspend or delay proceeding with furnishing the Materials as changed while the change terms between CGS and Supplier are being finalized. All changes requested by Supplier to the Purchase Order Amount, or the Delivery Date, or Location must be immediately conveyed in writing to CGS for consideration. Such changes requested by Supplier shall not be effective until accepted in writing by CGS. All changes shall be subject to all of the Terms and Conditions of this Purchase Order.
7. **Quantity/Inspection/Testing.** Supplier must provide documentation of the quantity of Materials delivered to CGS at time of delivery. Acceptance of the Materials, or failure to inspect them, shall in no way impair CGS' subsequent right to reject defective, damaged, or nonconforming goods, to recover damages or exercise any other remedies to which CGS may be entitled. Defective, damaged or nonconforming Materials and/or excess quantities not called for may be returned to Supplier at Supplier's expense, including, but not limited to, costs of unpacking, examining, re-packing, re-shipping and re-stocking. In the event CGS receives Materials with defects, damages or nonconformities that are not apparent on examination, CGS reserves the right to: (a) require replacement and payment of damages, with replacement Materials being delivered promptly after written notice from CGS; (b) accept the damaged Materials and repair them at Supplier's expense; (c) purchase the replacement Materials elsewhere at Supplier's expense; or (d) withhold payment until the damaged Materials are repaired or replaced by Supplier. Such remedies are cumulative. Nothing contained in the Purchase Order shall relieve the Supplier from its obligations of testing, inspection and quality control. Risk of loss for defective or nonconforming Materials will pass to the Supplier upon CGS' delivery of them to the common carrier. Rejection by CGS of any lot or individual item furnished under this Purchase Order does not relieve Supplier of its obligation to deliver conforming items in the quantities set forth in this Purchase Order.

8. **Insurance.** Supplier shall obtain and pay for Commercial General Liability insurance (standard ISO Form) with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate. Premises/operations and Products/completed operations coverage with CGS as an additional insured is required. This insurance coverage shall be provided by an insurance company or companies reasonably acceptable to CGS. If requested by CGS, Supplier shall provide CGS with certificates of insurance and policy endorsements evidencing such coverage and naming CGS as an additional insured. Such insurance shall be carried at all times during Supplier's performance of this Purchase Order and for two (2) years after all Materials have been furnished in compliance with Purchase Order requirements. It is the obligation of the Supplier to adequately arrange property insurance for Materials provided including while in transit and/or temporarily stored offsite covering financial interests of Supplier, CGS and Owner as applicable at time of any loss. Such property insurance shall not have deductible higher than \$5,000 without written consent of CGS.
9. **Warranties.** Supplier warrants that all Materials shall conform to requirements of this Purchase Order and any specifications incorporated in the Purchase Order by reference. Supplier warrants that all Materials shall be of merchantable quality and be fit for their intended use. Supplier warrants that the Materials shall be free from all defects for the period(s) otherwise called for in the Contract Documents or for twenty-four (24) months, whichever is longer, from the date of written final acceptance of the Project by the Project Owner. Supplier warrants that it will timely pay all amounts due to suppliers of labor, materials or equipment for work performed for, or materials or equipment provided to, Supplier in connection with this Purchase Order. Supplier warrants title to all items furnished and represents that they will be free of liens or encumbrances of any kind. Supplier warrants exact prices and delivery of exact quantities. Supplier warrants that when the Contract Documents require materials to be of a designated manufacturer or a specific brand name, that the Materials it supplies under this Purchase Order are in fact produced by the designated manufacturer and/or are of the designated specific brand, and that they are genuine and non-counterfeit. If CGS identifies defective or non-conforming Materials during the warranty period, Supplier, at its sole expense, shall promptly repair or replace all defective or non-conforming Materials within seven (7) days after written notice from CGS, or such other period as may be required by the specifications. Materials that are replaced or repaired shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer. If Supplier fails to timely repair or replace defective or non-conforming Materials, CGS shall be entitled to repair or replace the Materials, and to deduct the actual cost to repair or replace, plus a ten percent (10%) mark-up, from any amount due Supplier, and if none, then Supplier shall make payment to CGS within seven (7) days after CGS' written notice. Such costs shall include, but are not limited to, costs of removal, packing, transportation and reasonable attorneys' fees incurred as a result of Supplier's failure to timely cure. Supplier's warranties shall survive all inspections, tests and acceptance by CGS. Supplier's warranties shall run to CGS, the Project Owner, the Project Architect and their parents, subsidiaries, successors, and assigns.
10. **Indemnification.** To the fullest extent permitted by law, Supplier agrees to indemnify and hold harmless CGS, CGS' subcontractors, the Project Owner, the Project Architect, and their respective officers, directors, consultants, employees, and agents (collectively, "**Indemnitees**") from all claims, citations, penalties, forfeitures, judgments, losses, damages and other expenses of any nature, including but not limited to incidental damages, consequential damages, liquidated damages, reasonable attorneys' fees and costs of collection and appeal, arising from bodily injury, damage to real or personal property, Project delays, cost overruns, or any other harm or injury of any nature, caused in whole or in part by any fault, negligence, or reckless or intentional acts or omissions of Supplier, its suppliers, or any of its employees, consultants, or agents. Supplier's duty to indemnify the Indemnitees expressly extends to claims, citations, penalties, forfeitures, judgments, losses, damages and other expenses of any nature arising from bodily injury, damage to real or personal property, Project delays, cost overruns, or any other harm or injury of any nature, caused in part by an Indemnitees' own negligence.
11. **Termination.** CGS reserves the right to terminate this Purchase Order, or any part of it, for its sole convenience upon seven (7) days written notice to Supplier. CGS also may terminate this Purchase Order, or any part of it, for cause in the event of any default by Supplier, or if Supplier fails to comply with any of the terms and conditions of this Purchase Order. CGS shall give Supplier written notice of such termination for cause. Upon termination for cause, CGS shall have the right to enter upon the Project site or any storage facility owned or rented by Supplier for storing Materials and to take possession of all Materials and supplies thereon owned or controlled by Supplier for the purposes of completing this Purchase Order. Upon notice of termination for convenience or for cause, Supplier shall immediately stop providing Materials. CGS shall only pay Supplier for Materials that are actually supplied, less all amounts necessary to remedy any defects or deficiencies in the Materials, or to remedy any acts, errors, omissions, or defaults of Supplier. Supplier shall not be paid for any Materials supplied after receipt of the notice of termination, or for any costs incurred by Supplier's suppliers which could have been reasonably avoided. In no event will CGS be responsible, and Supplier expressly waives all claims for, any indirect expenses, overhead, and incidental and consequential damages.
12. **Dispute Resolution.** Should any dispute arise between Supplier and CGS related in any way to this Purchase Order or the rights and obligations of the parties to it, and in the event such dispute cannot be resolved through good faith negotiations, the dispute may be resolved, in CGS' sole discretion, by binding arbitration. Should CGS exercise its exclusive right to resolve the dispute by arbitration, then the parties shall use good faith efforts to select a mutually acceptable arbitrator within fourteen (14) days after CGS gives Supplier notice of CGS' election of arbitration. If the parties are unable to select an arbitrator, then the American Arbitration Association will appoint a single arbitrator under its "Construction Industry Arbitration Rules" then in effect. The award issued by the arbitrator shall be final and binding upon the parties, shall include attorneys' fees and costs to the prevailing party or parties, and may be entered as a judgment in any court having proper jurisdiction. Any arbitration under this provision shall be held in Milwaukee, Wisconsin. In the event CGS elects not to exercise its right to resolve the dispute by arbitration, or in the event a dispute between CGS and Supplier, or any portion thereof, is found to be non-arbitrable, then the parties hereby agree that the dispute or portion thereof (as the case may be) shall be subject to exclusive jurisdiction and venue in the courts of either Milwaukee County, Wisconsin or the United States District Court for the Eastern District of Wisconsin. In any such dispute or portion thereof adjudicated in court, Supplier expressly waives any right to trial by jury.
13. **Amendment.** This Purchase Order may not be amended or modified except in writing executed by both parties. Acceptance, on one or more occasions, by CGS of Materials that do not strictly conform to the terms of this Purchase Order shall not be a waiver of CGS' right to require strict conformance thereafter.
14. **Assignment.** Supplier shall not assign this Purchase Order or portions thereof, or sell or assign the proceeds of this Purchase Order, without the prior written consent of CGS. Neither an assignment nor consent thereto will relieve the assigning party from its obligations under this Purchase Order unless expressly permitted by the other party in writing.
15. **Interpretation.** Interpretation of this Purchase Order shall be governed by the laws of the State of Wisconsin, without giving effect to Wisconsin conflict of laws principles. Titles of paragraphs in this Purchase Order may not be used to limit interpretation or scope of duties or obligations

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hereunder. Plural tense shall include the singular and singular shall include the plural tense throughout this Purchase Order. This Purchase Order shall be construed to have been drafted through the equal efforts of both parties.

16. **Enforceability.** If any portion of this Purchase Order shall be found to be unenforceable, then, to the greatest extent possible, the remainder of the Purchase Order shall remain in full force and effect, and binding on the parties. Failure of any party to insist on strict compliance with the terms of this Purchase Order in any one or more instances shall not be construed as a waiver or relinquishment of such compliance as respects further performance.
17. **Execution.** This Purchase Order may be executed in multiple parts and joined together to form a single, binding contract. For purposes of executing this Purchase Order, and any Change Orders, Waivers or notices required under it, a facsimile signature shall be as binding as an original.

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By its signature below, Supplier agrees to the Purchase Order, including the Summary of Terms and the Purchase Order Terms and Conditions:

SUPPLIER:

CG SCHMIDT, INC.:

By: _____
(Signature)

By: _____
(Signature)

(Printed Name)

Nicole C. Barham
(Printed Name)

(Printed Title)

Risk Manager
(Printed Title)

(Date)

(Date)

Phase: