

JH KELLY, LLC TERMS & CONDITIONS
(Applicable to all JH Kelly, LLC Purchase Orders and Incidental Service and Material Orders)

1. **Seller's Acceptance.** This Purchase Order or Incidental Service and Material Order ("Order") is an offer to buy or rent and not an acceptance of Seller's offer to sell or rent. Acceptance of this order, shipment of goods, the furnishing of services or a lack of objection within ten (10) days of receipt hereof will constitute agreement to the terms and conditions herein. In the event Seller's acknowledgment or other response hereto states terms additional to or different than those set forth herein, this order shall be deemed notice of objection to such additional or different terms and rejection thereof. In addition, in the event Buyer's procurement for the project noted on the order form ("Project") is subject to and/or governed by an upstream contract ("Contract Documents"), the provisions of said Contract Documents shall apply to this order. Seller agrees to be bound to Buyer by each and all of the terms and provisions of the Contract Documents as they pertain to the items ordered on this Order, and to assume toward Buyer all duties, obligations and responsibilities that Buyer, by the Contract Documents, assumes toward Owner. Seller agrees that Buyer shall have the same rights and remedies against Seller as Owner, under the terms and provisions of the Contract Documents, has against Buyer, with the same force and effect as though each and every such right and remedy were set forth herein in full. The terms and provisions of this Order are intended to be and shall be, in addition to, and not in substitution for, any terms and provisions of the Contract Documents.

2. **Inspection and Acceptance.** Inspection and preliminary acceptance of goods delivered hereunder will be made at destination. Goods rejected at destination for non-conformance with specifications shall be repaired, replaced or removed by Seller at Seller's expense promptly after notification of rejection. Inspection by Buyer (and/or third party if required by the Contract Documents) shall be made as promptly as practical after delivery. Final acceptance shall be made after installation, start-up and testing. Buyer shall also have the right at all reasonable times to inspect and test all goods furnished by Seller and all work performed or furnished by Seller. If after inspection, Buyer rejects any goods furnished by Seller hereunder, Buyer may, at its election, return those goods to Seller at Seller's expense. By inspecting and not rejecting any goods and work furnished hereunder, Buyer shall not be precluded thereby from subsequently revoking its acceptance thereof if the goods or work are later discovered to be non-conforming with this order or the specifications and drawings applicable hereto, or if defects in design, performance, materials or workmanship appear within the period of the statute of limitations.

3. **Cancellation.** Buyer shall have the right to cancel all or any portion of this order at any time and its liability shall be limited to actual costs incurred. The above notwithstanding, Buyer may, by written notice of default to Seller, cancel the whole or any part of this order without penalty or cost if Seller fails to make delivery of the goods or perform the services within the times specified herein, or if Seller fails to perform any other responsibility or obligation hereunder. If Seller furnishes goods hereunder which are standard catalog items as of the date of this order, Buyer shall have the right, at its option, to return to Seller any and all such catalog items. In such event, Seller shall refund to Buyer or credit against the unpaid amount hereunder the purchase price of such returned items, less a maximum restocking fee of ten percent (10%). This order may also be terminated by Buyer without cost or penalty if Seller becomes insolvent, makes an assignment for the benefit of creditors, is subject to any proceeding in bankruptcy, or if a receiver is appointed; if Seller fails to deliver or perform in accordance with the order terms, or if Seller fails to pay when due any charge for labor, materials, or services incurred in connection with this order; or if Seller otherwise breaches its obligations, warranties, or covenants hereunder. No such termination shall waive any other remedies Buyer may have with respect to Seller.

4. **Extra Charges.** No claims by Seller that any instructions, by drawing or otherwise, constitute a change in Seller's performance hereunder, for which Seller should be paid additional compensation, shall be valid unless prior to commencing such allegedly extra work, Seller have received written authorization therefor from Buyer. No claim for additional compensation on the basis of failure or delay by Buyer or its agents or contractors shall be valid unless made in writing to Buyer within ten (10) days of the alleged delay or failure and approved by Buyer; provided however, that if Seller should be delayed in its performance hereunder by the omission, neglect or default of Buyer, its agents or contractors, then Seller shall be entitled solely to an extension of time for a period equal to the time lost as a result of such cause, as determined by Buyer. NO PAYMENT WILL MADE FOR ANY EXTRAS OR CHANGES NOT SO AUTHORIZED.

5. **Delivery Conditions.** A detailed packing list with the order number prominently displayed must accompany each shipment. No charge will be allowed for packing, crating, drayage, or shortage without Buyer's written permission. Equipment shall be shop assembled in sections as complete and as large as possible for shipment. Goods delivered in excess of the amount called for in this order may be refused and returned at Seller's expense. Unless otherwise stated in writing, prices and delivery are "F.O.B Destination-Freight Prepaid." All charges are included in the price and no extra charges of any kind shall be allowed unless specifically provided in this order. Regardless of F.O.B. point, Seller agrees to bear all risk of loss, injury, or destruction of goods and services ordered herein which occur prior to acceptance. Goods rejected by Buyer for whatever reason shall be held, transported and/or stored at Seller's sole expense. Seller shall promptly reimburse Buyer for any such expenses which Buyer has advanced on Seller's behalf. Time is of the essence hereof, and no change in the scheduled delivery date will be permitted without Buyer's prior written consent. Seller shall notify Buyer immediately of any back ordered items, and no acceptance of goods or services after the scheduled delivery date shall waive Buyer's rights with respect to such late delivery, nor shall it be deemed a waiver of future compliance with the terms hereof. Seller shall strictly, comply with all applicable, laws, ordinances, rules and regulations and, upon request by Buyer, shall furnish such evidence of compliance as Buyer may require at any time.

6. **Changes & Substitutions.** Buyer may, at any time, by written notice, make changes in the specifications, designs or drawings, samples or other descriptions to which the goods or materials are to conform, in methods of shipment and packaging, time of delivery, or place of delivery. If any changes cause an increase or decrease in the cost of or the time required for performance of any part of the work under this order, an equitable adjustment shall be made in the price or delivery schedule, or both, and this order modified in writing accordingly. Any claim by the Seller for such an adjustment must be made in writing within ten (10) days after receipt of any such notice; provided, however, that Buyer may at its discretion, receive and act upon any such claim so made at any time prior to the final payment under this order. Nothing in this clause, including any disagreement with Buyer as to the equitable adjustment to be made, shall excuse the Seller from proceeding without delay to perform this order as changed. If a brand or industry standard is listed in the order, the goods and services must meet the standards for quality, performance, and use therefor. If Seller is willing to supply a product equivalent to a designated brand, it must first provide Buyer with descriptive literature identifying its brand, including the quality performance and specifications therefor. If Buyer elects to accept goods purported to be equal to a designated brand, the goods may be rejected and dealt with as provided in Paragraph 2 hereof if later determined to be non-conforming. No waiver of or exception to any of the terms conditions, or provisions contained in this order shall be valid unless specifically agreed to in writing by both parties.

7. **Sellers Warranties.** Seller warrants, in addition to all other warranties imposed or implied by law or statute, that the goods and services supplied hereunder will conform to the specifications and descriptions referred to on the reverse side hereof or otherwise furnished by Buyer; be merchantable and fit for the particular purposes for which such goods are ordinarily employed; be free of defects in material and workmanship for a period of at least one year from the date such work is performed or such goods are utilized or installed, which warranty shall survive Buyer's sale or other transfer of the goods. Seller further warrants that it has good and marketable title to the goods and that the goods will be delivered free and clear of all liens, claims and encumbrances. Seller further warrants, that Buyer's purchase, installation, and/or use of the goods covered hereby will not result in any claim of infringement, or actual infringement, of any patent, trademark, copyright, franchise or other intellectual property right. **Seller further agrees to indemnify and defend Buyer from any and all suits, damages and expenses**

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incurred by or instituted against Buyer, its agents or customers as a result of or in connection with any breach of these warranties or allegation of infringement in connection with the goods or service provided hereunder.

8. **Indemnity.** Seller hereby agrees to indemnify Buyer for any loss, expense, damage or settlement, including counsel fees and costs of defense, which arise from any demand, claim (whether frivolous or not) or suit which may be asserted or brought against Buyer as a result of any lien, loss, cost, injury, or damage to any person or persons (including death) or property (a) allegedly caused by, resulting from, arising out of, or occurring in connection with furnishing (or failure to furnish) of any goods, equipment or services or the performance or preparation for performance of any of the work or any duties of the Seller hereunder, or incidental or pertaining thereto, and (b) whether or not such injury or damages is due to any alleged concurrent negligence of Buyer, any employee of Buyer, the site owner or any Project contractor or subcontractor including but not limited to any claim based or liability without fault for injury caused by defective goods supplied by Seller. Seller also agrees to assume responsibility for and to indemnify Buyer for the payment of any expenses, cost including delay costs, direct and consequential damages, liquidated damages, penalties, taxes or assessments (including punitive damages), including counsel fees and cost of defense, which may be imposed or incurred (a) under any Federal, State or Local law ordinance or regulation upon or with respect to any compensation of any person employed by Seller; (b) pursuant to the Contract Documents; and/or (c) under any Federal, State or Local law ordinance or regulation upon or with respect to discrimination in employment against any individual employed by Seller on the basis of race, color, religion, sex national origin. Seller agrees to secure and maintain for the duration of the Project insurance sufficient to support the above listed indemnities and any Contract Documents requirements (including CGL, Workers Compensation, Professional Liability and Errors and Omissions) from an insurance carrier holding a minimum AM Best rating of A-VII. Seller shall name Buyer as an additional insured on such policies and provide Buyer with evidence thereof at Buyer's request.

9. **Buyer's Remedies.** Seller shall for the duration of its warranties under paragraph 7 herein, at the discretion of the Buyer and at the expense of Seller, replace, repair, and insure any and all faulty imperfect goods or work furnished or performed by Seller hereunder. In the event Seller fails to do so, Buyer may furnish or perform the same and recover from Seller the cost and expense directly or indirectly resulting therefrom including consequential damages including, but not limited to the cost or expense of inspection, testing, removal, replacement, re-installation, destruction of other materials resulting therefrom and any increased costs or expense to Buyer in its performance under contracts with others, plus fifteen (15%) of all such costs and expenses for overhead. The foregoing remedies shall be available in addition to all other remedies available to Buyer in equity or at law, including the Uniform Commercial Code.

10. **Assignment.** Seller shall not assign, transfer or subcontract this order or any part hereof by operation of law or otherwise without the written consent of Buyer. Such consent shall not release Seller from its obligations and liabilities.

11. **Force Majeure.** Neither party shall be liable for unforeseeable and uncontrollable delays or defaults due to acts of God, governmental authority, or the public enemy, or fires, floods, epidemics, strikes, labor troubles, freight embargoes, or causes or contingencies reasonably beyond its control, but this paragraph shall not prevent Buyer from canceling in accordance with paragraph 3 hereof.

12. **Taxes.** It is presumed that the materials and supplies purchased hereby are exempt from taxation and no federal, state or local taxes and duties have been assessed. In the event that an exemption from taxation is not applicable, the price quoted herein shall include all applicable taxes and duties.

13. **Set-Off/Liens.** Any monies due for the goods and services furnished under this order may, at the option of Buyer, be applied to the payment of any sums which Seller may owe to it. Seller also hereby waives and releases any and all liens or claims of liens or any right against any labor and/or material bond it has with respect to the Project or the Project site.

14. **Governing Law.** This order shall be governed by and construed in accordance with the laws of the State of Washington. If Buyer retains an attorney to enforce any term, condition or covenant, or if Seller commences suit against Buyer for any action, then Seller shall pay Buyer's reasonable attorneys' fees and expenses at both trial and appellate levels in preparation therefor.

15. **Confidentiality.** Without prior written consent of the Buyer in each instance, Seller shall not reveal to a third party the details, characteristics, or any information on materials made to the special order of Buyer or use reproductions thereof in any promotional media or reveal that Buyer is purchasing materials ordered hereunder.

16. **Entire Agreement.** Unless a "JH Kelly Supplemental Information Sheet" is appended hereto, the provisions of this order represent the entire agreement between the parties hereto and shall not be changed without the prior written consent of the parties.

17. **Rented Equipment.** If this order is used to rent or lease equipment, material or other articles (herein referred to as "rented equipment") all of the foregoing terms and conditions unless specifically expected, and the additional following terms and conditions shall apply: (a) Buyer shall pay to Seller as rent for the period the sums, subject to adjustments as herein after provided, as set forth on the reverse side hereof. During the rental period Buyer shall be responsible only for ordinary preventative maintenance and such extraordinary preventative maintenance and such extraordinary repairs caused by the negligence of Buyer, its agents and employees, and the responsibility for all other repairs to or deterioration of the rented equipment shall be with Seller; (b) If the rented equipment should become inoperative through no fault of Buyer, the rent to be paid by Buyer shall be reduced in the proportion that the period of down time bears to the rental period, and to the extent that such down time results from the defect or weakness of the rented equipment. Buyer's additional expenses, including operator costs and delay costs shall be credited against the rent payable hereunder; (c) Buyer shall return the rented equipment at the end of the rental period as provided on the reverse side hereof; (d) If the rented equipment should be lost or stolen from Buyer's possession, Buyer shall promptly upon discovery of the loss or theft notify Seller and such notification shall terminate the rental period. Buyer shall be responsible for only such protection of the rented equipment as is commercially reasonable, and if it is found the Buyer failed to provide such commercially reasonable protection, Buyer shall be liable to Seller for the fair market value of such lost or stolen equipment at the end of the rental period, less (i) proceeds of insurance thereon collected by Seller, and (ii) that portion of the rental period which exceeds the depreciation of such equipment, as reflected on Seller's records for tax purposes; and (e) In the event that the rented equipment proves unsatisfactory for Buyer's purpose or is no longer needed at the job site by Buyer, Buyer may return the rented equipment and, by such return, thereupon terminate the rental period and Buyer's liability for further rent. Any terms or conditions which are inconsistent with the terms and conditions of this order contained in Seller's rental form or similar document shall have no force or effect and such rental form or similar document(s) shall serve only as a delivery receipt.

18. In no event shall any preprinted terms and conditions found on any proposal or invoice by Seller be deemed an amendment or modification of this Order. Buyer objects to all terms and conditions in addition to or different from the terms and conditions contained in any written acceptance or order confirmation which may be issued by Seller. In the event this Order is deemed an acceptance of a prior offer by Seller, Buyer's acceptance is limited to the express terms contained herein and

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any additional or different terms contained in Seller's proposal shall be deemed material and are hereby objected to and rejected. This Order shall operate as a rejection of Seller's offer if it contains variations to the description, quantity, price or delivery schedule of the goods.

19. **Jobsite Work and Deliveries.** For all work performed by Seller at a jobsite (including deliveries), Seller (including any common carrier or delivery service provider hired by Seller) agrees to follow all safety rules established by Buyer, the owner of the jobsite, or any other person or entity charged with management of the jobsite. If there are any questions or doubts regarding the jobsite safety rules, it is Seller's obligation to seek direction from Buyer before proceeding further with the delivery or jobsite work. Seller's failure to follow the jobsite safety rules constitutes a material breach and subjects Seller to all remedies and indemnity obligations set forth in these Terms and Conditions.