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## **PURCHASE ORDER TERMS AND CONDITIONS**

Applies to Vendors & Motor Carriers

Unless stated otherwise within a particular term or condition, all terms and conditions apply to all purchase orders issued to motor carriers and vendors that perform services for and/or supply goods to Contractor, as defined below. If a conflict arises between a provision in the purchase order or other specific agreement and these terms and conditions, the provision in the purchase order or other specific agreement governs.

### DEFINITIONS:

- A. The "Agreement" refers to the entire agreement, including the purchase order and the terms and conditions stated herein.
- B. "Change Order" means a written document signed by Contractor and Vendor to change the work, the Contract Price, and/or the time for performance or any other terms of the Agreement.
- C. "Contractor" means the entity issuing the Purchase Order to which these terms and conditions apply. Generally, Contractor will be Lee Machinery Movers, Inc. (hereinafter referred to as "LMM"), unless a different entity is identified as Contractor in the Purchase Order itself. The term "Contractor" shall be used regardless of whether the actual role of the entity issuing Purchase Order is general contractor, construction manager, design builder, or otherwise.
- D. "Vendor" means the entity designated as an approved supplier being issued a Purchase Order, including its subordinate parties, affiliates, agents, successors, and assigns. The term "Vendor" includes suppliers, and motor carriers.
- E. "Owner" means the party with whom Contractor has entered into the Prime Contract with respect to the Project, even if such party does not own the Project.
- F. "Project" means the project identified in the Agreement for which the Vendor is to supply goods as described in the Purchase Order.
- G. "Carrier" or "motor carrier" refers to any third-party motor carrier that contracts or subcontracts with Contractor to transport any cargo via motor carriage.
- H. "Work," refers to the services performed or to be performed by vendors, including the entire process of supplying goods. Whether the Work is performed by a vendor, supplier, or carrier, the terms of the Work shall be as outlined in the Agreement.
- I. "Insurance Requirements" broadly refers to any insurance required by the Agreement and federal, state, or local statutes and ordinances, and includes insurance required by any governing regulatory organization or agency.

## TERMS AND CONDITIONS:

1. **RELATIONSHIP OF THE PARTIES.** Vendor is an independent contractor and is not an agent, servant, employee, legal representative, partner, or joint venturer of Contractor. Nothing in any Agreement shall be deemed to create a joint venture or partnership between Vendor and Contractor or any of Contractor's affiliates. Vendor has the sole right and obligation to supervise, manage, and direct all work to be performed by their personnel under the Agreement. Vendor has no authority to represent or bind Contractor.
2. **CONTRACT PRICE:** Contractor agrees to pay vendor under the Agreement from funds actually received by Contractor from or on behalf of Owner for proper performance of the Work.
3. **INVOICE:** Unless otherwise agreed to in writing, vendor shall provide an accurate and properly prepared invoice within 30 days of project completion date or delivery of goods, whichever is sooner. All invoices must reference the Purchase Order number. Any invoice sent after 30 days without prior approval from Contractor may not be accepted for payment. Carrier will submit one invoice for the entire Purchase Order unless progressive payments are mutually agreed upon prior to start of the project. For suppliers, no invoice will be processed for payment until the Contractor has received goods, inspected them, and has determined they are satisfactory. Fines and removal charges not caused by Contractor will be back-charged to Carrier/supplier.
4. **PAYMENT:** Payment will be processed per the agreed upon payment terms. With respect to invoices covering goods which cannot immediately be put into operation, Contractor reserves the right to withhold payment of such invoice pending the owner/end user's approval of the operation of such goods. All correspondence on matters of payment shall be directed to the Contractor's Accounts Payable Department. Unless otherwise agreed to in writing, Contractor will pay Vendor for its Work within sixty (60) days of Contractor's receipt of: (a) an appropriate and accurate invoice; (b) any lien waivers, if required by Contractor; and (c) payment from the applicable project Owner(s).
6. **TAXES:**
  - a. Vendor's tax exemption certificate shall be supplied to Contractor upon request.
  - b. Except as otherwise provided in the Agreement, each Party remains solely responsible for taxes of any type imposed or assessed on such Party and its Affiliates. Each Party agrees to reasonably cooperate with the other to enable each to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible.
  - c. The only taxes Contractor shall be responsible for paying to Vendor are those sales taxes associated with the purchase of supplies and any applicable taxes imposed by a governmental tax authority on services. Governmental taxes on sales and services shall be paid by Contractor on a pass-through expense basis, at Subcontractor's actual cost, without any markup.
  - d. All taxes for which Contractor is liable shall be included in the invoices, with separate identification of taxable and non-taxable charges and shall include the tax rate at which the taxes are assessed. If Vendor is responsible for failing to invoice Contractor for any tax on sales or services or fails to pay such taxes to the applicable taxing authorities in a timely manner, Vendor is fully responsible for the uncharged or unpaid taxes and any associated penalties and interest.
7. **TIME OF PERFORMANCE:** Vendor shall schedule and perform its work so that the entire project may be completed in accordance with the Agreement. The Vendor agrees to carry on its work with diligence and without delaying

or unreasonably interfering with other aspects of the project to be performed by Contractor or by its Subcontractors/Suppliers, and further agrees at all times to schedule and supply the required materials and skilled workmen in sufficient quantities and numbers and with sufficient tools and equipment to perform Subcontractors' work efficiently and expeditiously. Subcontractor shall promptly notify Contractor in writing immediately upon becoming aware of any circumstances that may jeopardize the timely completion of Work or provision of supplies. Subcontractor shall use commercially reasonable efforts to avoid and minimize delays and will inform Contractor of (a) the steps taken or to be taken to avoid and minimize delays and (b) the projected completion time. The Subcontractor shall commence the several parts of the work at such times and shall proceed therewith at such places and in such order as Contractor may direct and in accordance with the schedule of work, if any, provided by the Contractor. Time is of the essence with respect to the performance of Work and provision of supplies.

8. PERSONNEL. Subcontractor shall assign an adequate number of its personnel to perform the Work. All personnel shall be properly educated, trained, familiar with, and fully qualified for the Work they are assigned to perform (including, without limitation, being licensed in the relevant regions to provide Work that requires a license). Subcontractor will assign sufficient supervisory personnel to provide adequate liaison with Contractor. Subcontractor will manage, supervise, and provide direction to its personnel and cause them to comply with the obligations and restrictions applicable to Subcontractor under the Agreement. Subcontractor is responsible for the acts and omissions of its personnel.

9. SUBCONTRACTING. Vendor may not subcontract or delegate the performance of any part of the Work without Contractor's prior written consent, which Contractor may withhold in its sole discretion.

10. CHANGES IN THE WORK: No changes to the work, the Contract Price, the schedule, or other terms of the Agreement are authorized unless approved in a Change Order or Notice to Proceed signed by an authorized representative of Contractor. No course of dealing or course of performance between the parties shall be the basis for an increase in the Contract Price or extension of the Schedule.

11. TERM DURATION AND TERMINATION. The Agreement shall be effective when signed by both Parties and shall remain in effect until terminated pursuant to the terms of the Agreement or by mutual written agreement of the parties. Contractor reserves the right to cancel in whole or in part, without liability, the Agreement if the Vendor becomes insolvent; files a voluntary petition in bankruptcy, or an involuntary petition is filed to have Subcontractor declared bankrupt and is not vacated within 30 days from the date of filing; Vendor executes an assignment for benefit or creditors; or if Vendor breaches any of the terms of the Agreement including the warranties of Vendor.

12. DEFAULT/BREACH. If Vendor: (i) fails to perform the Work or any part thereof with promptness and diligence; (ii) delays the progress of any applicable project; (iii) becomes bankrupt or insolvent; (iv) fails to sufficiently supply properly skilled workmen or materials of proper quality; (v) fails to pay its subcontractors, suppliers or employees the amounts properly due said persons or entities; (vi) fails to pay workers' compensation or other employee benefits; (vii) fails to comply with any applicable safety provisions, including but not limited to its own safety plan or any safety plan of Contractor, or with any safety order, regulation or requirement of any governing authority having jurisdiction over a project; (viii) files a voluntary petition in bankruptcy or be adjudicated insolvent, obtains an order for relief under Section 301 of the Bankruptcy Code, files any petition or fail to contest any petition filed seeking any reorganization or similar relief under any laws relating to bankruptcy, insolvency or other relief or debtors, or seeks or consents to or acquiesces in the appointment of any trustees, receiver or liquidator of any of its assets or property, makes

an assignment for the benefit of creditors; or makes an admission in writing of its inability to pay its debts as they become due; (ix) defaults on any other contract with Contractor, or (x) fails in any other respect to comply with this Agreement, then Vendor shall be in default of this Agreement. In the event that Vendor is in default of this Agreement, then the Contractor may, in addition to any other remedies available to Contractor at law or in equity:

- a. Require that Vendor utilize, at its own expense, additional labor, overtime labor (including Saturday and Sunday work) and additional shifts as necessary to overcome the consequences of any delay attributable to their default; and/or
- b. After forty-eight (48) hours' written (or oral, confirmed in writing) notice to Vendor, remedy their default by whatever means Contractor may deem necessary or appropriate, including, without limitation, providing such labor and materials as may be necessary to properly complete the Work, whereupon Contractor may deduct the cost and expense thereof from any money then due or thereafter to become due Vendor under the Agreement. Vendor acknowledges that it shall be commercially reasonable for Contractor to engage a completion subcontractor on a cost- plus or time-and-material basis; and/or
- c. After giving Vendor forty-eight (48) hours' written (or oral, confirmed in writing) notice, terminate the Agreement, without waiving or releasing any rights or remedies against Vendor or its sureties; and/or
- d. Recover from Vendor all costs incurred by Contractor to complete the Work and further recover from Subcontractor all losses, damages, penalties, and fines, whether actual or liquidated, direct or consequential, and all reasonable attorneys' fees suffered or incurred by Contractor as a result of said default(s); and/or
- e. Bar Vendor from the job site and take possession for the purpose of completing the Work, all materials, tools, scaffolding, apparatus, machinery, and equipment thereon, and to employ or contract with any other person or persons to finish the Work.
- f. Vendor shall not be entitled to receive any further payment under the Agreement until the Work shall be wholly finished, at which time if the unpaid balance of the amount to be paid on the Agreement shall exceed the expense incurred by Contractor in finishing the Work, then such unpaid balance, after deducting any loss, damage or expense, by reason of Vendor's failure to adequately perform, including damages for delays, and expense for attorney's fees, shall be paid by Vendor to Contractor. If the costs, expenses, losses, and damage of such work exceeds the unpaid balance, Vendor shall immediately pay the amount of such excess to Contractor.
- g. If, as a matter of law, the Contractor does not have the right, due to a bankruptcy proceeding involving the Vendor, to exercise the remedies provided for in this Agreement, then if Vendor, as debtor or its trustee, wishes to assume the applicable Agreement, in addition to curing or adequately assuring the cure of all the Vendor's defaults existing under the Agreement on the date of filing of the proceedings and thereafter, Vendor, as debtor, or its trustee, must also furnish adequate assurances of future performance under the Agreement.

13. WARRANTIES:

- a. In addition to all other warranties set forth in the Agreement or imposed by applicable law, Vendor warrants to Owner and Contractor that the work/goods will be free from defects and performed/supplied in strict conformity with the requirements of the Agreement and any applicable code requirements. This warranty survives the termination of the Agreement and the completion of the work specified in the Agreement shall only

be extinguished by limitation periods imposed by applicable law, and shall not be limited by any other provisions contained in the Agreement.

b. Vendor shall promptly correct work that is defective or fails to conform to the Agreement, whether it receives notice before the effective date of the certificate of substantial completion, or within a period of one year thereafter, or within the time period that Contractor is obligated to correct work under the Prime Contract, whichever is longer. Nothing in this section establishes a period of limitation or otherwise restricts obligations, which Vendor may have under other provisions of the Agreement or applicable law.

14. **INSURANCE:** The following insurance requirements apply unless otherwise agreed to in writing.

Vendor shall comply with all Insurance Requirements at its own expense. Upon execution of this Agreement, and prior to Subcontractor commencing the Work for Contractor, the Vendor shall maintain and provide Contractor with insurance certificates upon request reflecting the following types of coverages in amounts not less than stated:

a. **Worker's Compensation Insurance** covering Subcontractor's statutory obligation in the state(s) which the Work is to be performed and Employer's Liability Insurance with limits no less than \$1,000,000.00 Each Accident, \$1,000,000.00 Bodily Injury by Disease – Policy Limit, and Disease – Each Employee \$1,000,000.00.

b. **Automobile Liability Insurance** with a combined single limit for bodily Injury and Property Damage Liability of \$1,000,000.00 per accident covering your owned, non- owned, and hired automobiles.

c. **Motor Carrier Vendors.** All Vendors who are motor carriers must carry the minimum insurance mandated by the Federal Motor Carrier Safety Act in addition to all insurance required by state or federal law or regulation.

d. Commercial General Liability Insurance, unless otherwise agreed to in writing, shall be written on an Occurrence Policy Form which includes coverage for Subcontractor's operations, personal injury, XCU (explosion, collapse and underground), Independent contractors, contractual and products/completed operations with the following limits of liability; PER JOB SITE AGGREGATE.

i. General Aggregate \$2,000,000.00

ii. Products/Completed Operations \$2,000,000.00

iii. Personal and Advertising Injury \$1,000,000.00

iv. Each Occurrence \$1,000,000.00

v. Products/Completed Operations Liability must be maintained for not less than three (3) years after acceptance of your work.

h. Prior to starting and until final completion and acceptance of Work by the Owner, The Subcontractor shall maintain the minimum insurance coverages mentioned in this agreement. Subcontractor shall furnish Contractor with a certificate of insurance naming Contractor as Additional Insured for on-going operations and products/completed operations via forms CG2010 1/85 or CG 20 10 10/01 or equivalent; General Liability aggregate limits shall be applicable on a per project basis and be primary and non- contributory. All terms required under the General Liability, Automobile Liability, and Employers Liability must be included in the Umbrella/Excess Liability policy. A joint or unilateral waiver of subrogation will be required for General Liability, Automobile, and Workers Compensation.

15. **SAFETY STANDARDS.** Vendor agrees that the Vendor and its employees are required to fully comply with and implement all government laws, including any OSHA or MIOSHA requirements pertaining to safety standards. Vendor

indemnifies and agrees that any fines, assessments, or penalties imposed upon the Contractor by failure of the Vendor or its employees/agents to comply with the applicable standards will be fully charged back to and paid for by the Vendor.

16. ENTIRE AGREEMENT. The Agreement constitutes the entire understanding of the parties and supersedes any prior proposal or agreement. It shall not be modified, amended, or revoked except in writing executed by an authorized representative of Contractor. By accepting the Agreement, Vendor agrees it has not relied on any promises or representations unless stated herein. Should any portion of the Agreement be held invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall be valid and enforceable to the fullest extent permitted by law. The failure of Contractor to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver, nor in any way to affect the validity of the Agreement or any part thereof or the right of Contractor to enforce each and every provision. The Agreement shall be governed by all applicable laws of the state where the Project is located, except that the arbitration provision is governed by the Federal Arbitration Act.

17. INDEMNIFICATION: To the fullest extent permitted by law, Vendor shall defend, indemnify and hold harmless Contractor and its agents, employees, shareholders, officers, directors, partners, affiliates, and successors from and against any and all liabilities, claims, causes of action, lawsuits, or expenses arising from (a) Vendor's breach or failure to comply with the Agreement, including any Default or breach of any warranty, or (b) personal injury or death to any person (including employees of Vendor or Subordinate Parties) or property damage (including claims for loss of use), which arise out of or result from the Work or the operations or acts of commission or omission of Vendor, including those of its Subordinate Parties, unless the injuries or damages are caused by the sole negligence of the party seeking to be indemnified. All indemnification, payment, warranty, lien waiver, title, and remedies provisions shall survive the termination or expiration of this Purchase Order.

18. RIGHT OF INSPECTION: Payment for the goods or services furnished hereunder shall not constitute acceptance thereof. Contractor will have 30 days from delivery of the Goods to inspect for visual defects. Contractor will have additional reasonable time to inspect and to reject the Goods for latent defects. If all or any part of the Goods are found to be non-conforming, Contractor may reject such non-conforming goods, whereupon such rejected Goods will be promptly removed by Vendor at their own cost, and the Purchase Price with respect to such rejected Goods will be refunded by Vendor if already paid, or shall be deducted from payment if still owing. In either case, if Contractor so elects, Vendor will promptly replace such non-conforming goods with conforming goods. All direct and incidental costs of rejecting and removing such non-conforming goods will be the responsibility of Vendor, including reasonable shipping and storage costs and fees.

20. REGULATORY COMPLIANCE AND NONDISCRIMINATION:

Vendor will comply with all applicable laws, ordinances, rules, regulations, and orders ("Laws") of any public authority having jurisdiction, including, but not limited to, all applicable Laws dealing with labor and wages, worker's compensation, employer liability, unemployment compensation, safety, antitrust and anti-collusion, fair trade, the environment, equal employment opportunity and discrimination on the basis of any characteristics that may be protected by law. Vendor will indemnify and defend Contractor from and against any and all claims arising out of Vendor's alleged or actual breach of Laws.

21. FORCE MAJEURE: Contractor will not be liable for any failure or delay in performing an obligation under the Agreement that includes but is not limited to any of the following causes: acts of God, hurricanes, earthquakes and other

natural disasters, explosions, epidemics/pandemics, terrorism, government acts, embargoes, labor strikes & disputes lockouts, and such other industrial action by workers related to or in response to the terms and conditions of employment of those workers or others with whom they are affiliated except, when such event is directly related to, or in direct response to any employment policy or practice (with respect to wages or otherwise) of the party whose workers resort to such action; breakage of plant equipment, structural collapse, chemical contamination, and other events beyond the control of the parties; or anything that materially affects the performance of any of the Vendor's obligations under this agreement that could not reasonably have been foreseen or prepared against. The Vendor shall take all reasonable actions to minimize the delay caused by any of the above factors.

22. NO DAMAGES FOR DELAY: Contractor shall not be liable to the Vendor for any damages or increased compensation of any kind caused by any delay or disruption to Vendor's performance of work regardless of whether such delay is caused by Contractor, other parties under Contractor's control, Force Majeure, or by any other cause, unless the Contractor has first recovered increased compensation on behalf of the Vendor from the Owner.

23. CARGO LIABILITY FOR CARRIERS. Vendors that are motor carriers shall be liable to Contractor for all loss or damage to any cargo, machinery, or other products that Carrier will be transporting under the Contract. Carrier agrees that all interstate cargo claims for damaged shipments, late deliveries, or failures to deliver cargo shall be governed by the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706.

24. MISCELLANEOUS: If an Employee of the Contractor is hired by Vendor at any time during the relationship, or within 1 year of the end of the relationship between Contractor and Vendor, then Vendor will be billed a normal contingency placement fee of 40% of that employee's first year salary with Subcontractor. This placement fee will be paid by Subcontractor to The Contractor. This fee is necessary to recoup a portion of Contractor's training costs and the cost to recruit and train a replacement.