

GENERAL TERMS AND CONDITIONS

1. Applicability.

- a. The accompanying purchase order (the “**Purchase Order**”) and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller’s general terms and conditions of sale regardless of whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller’s acceptance to the terms of this Agreement. Fulfillment of this Purchase Order constitutes acceptance of these terms.

2. Delivery of Goods and Performance of Services.

- a. Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the “**Delivery Date**”). If Seller fails to deliver the Goods in full on the Delivery Date:
 - i. Buyer may terminate this Agreement immediately by providing written notice to Seller; and
 - ii. Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to deliver the Goods on the Delivery Date.
- b. Seller shall deliver all Goods to the address specified in the Purchase Order (the “**Delivery Point**”) during the Buyer’s normal business hours or as otherwise instructed by Buyer. Seller shall pack all goods for shipment according to Buyer’s instructions and in the sequence provided by Buyer and shall pack all goods in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller’s risk of loss and expense.

3. Shipping Terms. Delivery shall be made in accordance with the terms on the Purchase Order. The Purchase Order number must appear on all shipping documents, shipping labels, bills of lading, invoices, correspondence and any other documents pertaining to the Purchase Order.

4. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point.

5. Inspection and Rejection of Nonconforming Goods. Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; (c) reject the Goods and require replacement of the rejected Goods or (d) repair and replace such goods, the reasonable cost of which shall be borne by Seller. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause pursuant to Section 14. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller’s obligations under the Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

6. Price. The price of the Goods and Services is the price stated in the Purchase Order (the “**Price**”). Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and applicable taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer. Seller agrees that the price provided and agreed to will not increase for the duration of the project.

7. Payment Terms. Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with these Terms. Payment will be due forty five (45) days after invoice is received by Buyer and it is agreed that Buyer will have a forty five day grace period to issue payment with no penalty imposed, including interest. Buyer shall pay all properly invoiced amounts due to Seller as per the agreed upon terms, except for any amounts disputed by Buyer in good faith. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any

amount payable by Buyer to Seller under this Agreement. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than 5 days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section 7. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute.

8. Warranties.

- a. Seller warrants to Buyer that for the period as set forth in the attached contract specifications, all Goods will:
 - i. be free from any defects in workmanship, material and design;
 - ii. conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer, which are incorporated herewith;
 - iii. be fit for their intended purpose and operate as intended;
 - iv. be merchantable;
 - v. be free and clear of all liens, security interests or other encumbrances; and
 - vi. not infringe or misappropriate any third party's patent or other intellectual property rights.

These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer;

- b. The warranties set forth in this Section 8 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods or Services with the foregoing warranties. If Buyer gives Seller notice of noncompliance pursuant to this Section, Seller shall, at its own cost and expense, promptly (i) repair and replace the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer, and, if applicable, (ii) repair or reperform the applicable services.

9. General Indemnification. Seller shall defend, indemnify and hold harmless Buyer, Island Exterior Fabricators, LLC and their subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the Goods purchased from Seller or Seller's negligence, errors and omissions, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's prior written consent.

10. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

11. Limitation of Liability. Nothing in this Agreement shall exclude or limit Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

12. Insurance. During the term of this Agreement and for a period of six (6) years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$2,000,000 with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in these Terms. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

13. Compliance with Law. Seller shall comply with all applicable laws, regulations and ordinances. Seller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

14. Termination. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part. If Buyer terminates the Agreement for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted and Services accepted by Buyer prior to the termination.

15. **Waiver.** No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
16. **Confidential Information.** All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plan, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.
17. **Force Majeure.** Neither party shall be liable to the other for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this Agreement. If a Force Majeure Event prevents Seller from carrying out its obligations under this Agreement for a continuous period of more than 7 business days, Buyer may terminate this Agreement immediately by giving written notice to Seller.
18. **Assignment.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller's prior written consent to any affiliate or to any person acquiring all of substantially all of Buyer's assets.
19. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
20. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.
21. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in the County of Suffolk and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
22. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving party in writing.
23. **Waivers.** Purchaser shall provide lien waivers, in a form acceptable to Contractor and Owner, which must be executed prior to payment being issued. Failure to execute such waivers constitutes a material breach of this Agreement.



24. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
25. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Insurance, Compliance with Laws, Confidential Information, Governing Law and Survival.
26. Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.