



TERMS AND CONDITIONS

1. Agreement.

1.1. This Purchase Order (including these Terms and Conditions and all exhibits, attachments, modifications, and amendments hereto, collectively the “**PO**”) comprises the entire agreement between Pacific Rim Mechanical, Inc. (“**Buyer**”) and Vendor (each a “**Party**” and collectively the “**Parties**”) with respect to the job/project referenced in the PO (the “**Project**”). The PO shall govern the sale and delivery of all equipment, products, materials, and goods (collectively, the “**Goods**”) from Vendor to Buyer. All terms and conditions of the contract between Buyer and the Owner or Buyer and Prime Contractor (as applicable), including the general conditions, supplemental conditions, special conditions, plans, drawings, specifications, addenda, change orders, and modifications thereto (collectively, the “**Prime Contract**”), are expressly incorporated into this PO to the extent relating to the Goods and/or Vendor’s performance under this PO.

1.2. This PO supersedes any prior proposals, bids, understandings, correspondence, and agreements between the Parties, and shall prevail over any of Vendor’s general terms and conditions of purchase contained in any quotations, invoices, or other documents. Buyer expressly rejects all purported modifications, additions, alterations, or amendments to this PO, except those set forth in a writing signed by an authorized representative of Buyer that specifically states that it amends this PO. Vendor’s acknowledgment of an order release notice, shipment of Goods, or other performance of work in connection with the scope set forth in this PO shall constitute Vendor’s agreement to the terms of the PO (including these Terms and Conditions) and Vendor’s acknowledgment that this PO contains the entire agreement between the Parties, notwithstanding Vendor’s failure to sign the PO.

2. Goods. The Goods shall be provided in strict accordance with all applicable plans, drawings, and specifications in the Prime Contract (“**Plans and Specifications**”). The Plans and Specifications are incorporated herein. Vendor acknowledges that the Plans and Specifications have been made available to Vendor, and Vendor confirms that it has examined such Plans and Specifications. In the event of conflicts, inconsistencies, discrepancies, or ambiguities relating to the Goods, Vendor shall be deemed to have agreed to provide the most stringent or highest quality required with respect to the Goods. In the case of Goods to be furnished in bulk or by any unit of measurement, the Parties agree that the quantities set out in this PO are intended to cover Buyer’s

actual requirements under the Prime Contract, unless otherwise specified herein.

3. Price. Buyer agrees to purchase, and Vendor agrees to sell, the Goods at the price set forth in this PO (the “**Price**”). The Price is firm and shall remain firm until all deliveries have been completed. The Price is inclusive of (a) all charges for inspection, packaging, packing, loading, transportation, insurance, duties, and assessments, and (b) all federal, state, and local sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority.

4. Payment. Vendor will provide Buyer with an invoice at the time of making any full or partial delivery. Each invoice shall list the name of the Project, quantities shipped, date of delivery, unit costs, and total costs in conformance with this PO. Invoices shall list freight separately to assure that sales tax is not applied to freight costs. Buyer’s payment of any invoice shall not constitute acceptance of the Goods or the waiver of any failure of Vendor to meet the requirements of this PO. Buyer may withhold from the amounts due Vendor any amounts that Buyer reasonably deems necessary to protect Buyer from loss, including without limitation, due to damaged Goods, failure of Goods to comply with this PO, or any claim or lien against the Goods or the Project.

5. Lien Waivers. Vendor shall furnish, in forms satisfactory to Buyer, all requested lien waivers, affidavits, or other documents to keep Owner’s premises free from lien or claims for liens arising out of the furnishing of the Goods. Such lien waivers, affidavits or other documents so requested may be conditioned upon receipt of payment for the Goods covered thereby, if payment has not been received by Vendor.

6. Submittals. Vendor shall promptly submit for approval to Buyer all shop drawings, samples, product data, manufacturers’ literature, and similar submittals required by the Prime Contract or otherwise requested by Buyer. Vendor shall be responsible to Buyer for the accuracy and conformity of its submittals to this PO. Vendor shall prepare and deliver its submittals to Buyer at no increase to the Price and in a manner consistent with the project schedule, and any event within such time and sequence so as not to delay Buyer in the performance of the Prime Contract. The approval of any submittal shall not be deemed to authorize deviations, substitutions, or changes in the requirements of this PO unless express written approval is obtained from Buyer and Owner authorizing such deviation, substitution, or

change. Buyer and Owner are entitled to rely on the adequacy, accuracy, and completeness of any professional certifications required by this PO concerning the performance criteria of systems, equipment, or materials included in the Goods, including all relevant calculations and any governing performance requirements.

7. Delivery. The Goods shall be delivered to the delivery location specified in the PO. Vendor shall arrange for shipping of the Goods, pay for all shipping charges, and provide and pay for insurance of the Goods to the F.O.B. point. Modes of shipment shall conform to Buyer's instructions. Delivery shall be made in accordance with the terms specified in the PO. Vendor shall package all Goods in a manner: (a) in accordance with good commercial practice; (b) acceptable to common carriers for shipment at the lowest rate available for the particular Goods; and (c) adequate to insure safe arrival of the Goods at the delivery location. If shipments contain hazardous materials, Vendor shall comply with all procedures and requirements required by all applicable laws for the packing, packaging, notice, and transportation of hazardous materials. Vendor shall include a detailed and itemized packing list with each shipment.

8. Schedule and Delays.

8.1. TIME OF DELIVERY IS OF THE ESSENCE OF THIS PO. Vendor agrees to provide the Goods in accordance with and within the time specified in the schedule provided by Buyer. If no delivery date is specified in the PO, all deliveries of Goods shall conform to the date or dates specified in writing from time to time by Buyer's representative. Vendor shall confirm the applicable delivery dates in writing with Buyer prior to each and every shipment. Vendor agrees to keep Buyer fully informed as to the delivery status of the Goods, and to immediately advise Buyer in writing of any delay, circumstance, or development in the execution, processing, or shipment which may impair Vendor's ability to meet required delivery dates or which may otherwise affect the discharge of Vendor's obligations under this PO. Upon written request by Buyer, Vendor agrees to furnish to Buyer such evidence as Buyer may reasonably require relating to Vendor's ability to fully perform this PO in the manner and within the time specified herein.

8.2. In Buyer's sole discretion, Buyer may (but shall have no obligation to) grant extensions of the time for Vendor's performance; provided, however, no allowance of an extension of time for any cause whatsoever will be granted unless Vendor makes written request to Buyer for such extension within 3 days after the date Vendor becomes aware of the basis for such claim, and the failure to provide such notice shall be deemed a waiver of such claims by Vendor. Further, under no circumstances shall Vendor be entitled to an extension of time for delivery beyond that allowed to Buyer under the Prime Contract.

8.3. If Vendor fails to meet any delivery deadline or obligation in this PO, Buyer may, in its sole discretion and without prejudice to any other remedy it may have herein or by law, take any one or more of the following actions: (a) elect to take delivery of the Goods in an uncompleted state and pay such proportion of the Price as the work completed bears to the total work required by this PO; (b) cancel this PO without any liability whatsoever as to the balance of the Goods covered by this PO; (c) accept late delivery of the Goods; (d) obtain or purchase substitute Goods from other sources and charge the cost thereof to Vendor; and/or (e) require Vendor to obtain additional or substitute Goods so as to complete delivery in accordance with the required deadlines, and Vendor agrees to do so at its sole expense.

8.4. Vendor shall be liable for all damages to Buyer resulting from Vendor's failure to perform in a timely manner and shall be responsible for reimbursing Buyer for any loss or damage due to Vendor's failure to deliver any and all Goods in accordance with the project schedule or to properly perform any term, covenant, or condition contained in this PO. If Owner or Prime Contractor enforces any set off, penalty, liquidated damages, or other remedy against Buyer that arises out of the Goods furnished or Vendor's performance under this PO (including any errors, acts, or omissions of Vendor under this PO), Buyer shall be entitled to enforce such remedy against Vendor.

9. Risk of Loss. Title to the Goods shall pass to Buyer upon the earlier of: (a) delivery of the Goods to Buyer at the delivery location and acceptance by Buyer; or (b) upon payment by Buyer. Notwithstanding the foregoing, the risk of loss shall remain with Vendor until acceptance of the Goods by Buyer at the designated F.O.B. delivery location.

10. Inspection of Goods. Buyer, Prime Contractor, and/or Owner will initially inspect all Goods provided hereunder within a reasonable time after delivery and notify Vendor if any of the Goods are non-conforming. Notwithstanding the foregoing, Vendor acknowledges that Buyer's opportunity to fully inspect and test the Goods may be limited until the Goods are put into service due to the nature of the Project and construction projects generally. Therefore, Vendor agrees that Buyer shall perform final inspection and testing of the Goods during the installation and/or start-up phase of the Project and Buyer has a right to revoke its earlier acceptance following such final inspection and testing.

11. Warranty. In addition to the warranties required under the Prime Contract with respect to the Goods (to which Vendor expressly agrees to be bound) and any other express or implied warranties of Vendor, Vendor warrants that all Goods furnished under this PO shall be of good quality and workmanship and free from all defects, latent or patent. Vendor agrees to promptly

correct or replace, at Vendor's sole expense, any defective Goods and to remedy any defects not due to ordinary wear and tear or improper maintenance for a period of 1 year after Buyer's final acceptance of the Goods or such longer period as may be required by the Prime Contract. If any Goods are defective in material or workmanship or otherwise not in strict conformance with the requirements of this PO, Buyer may, by written notice to Vendor: (a) rescind this PO as to such Goods; (b) accept such Goods at an equitable reduction in price; (c) reject such Goods and require delivery of replacement Goods; or (d) require the Vendor to correct the Goods at the delivery location. Vendor will not be relieved from responsibility or liability for defects in the Goods or other failures to meet the other requirements of this PO despite Buyer's delay or failure to inspect or test the Goods or Buyer's acceptance of the Goods. These warranty provisions shall survive any inspection, acceptance, payment, or termination of this PO. These warranties shall run to Buyer, Owner, and Owner's successors and assigns. Nothing herein shall limit Buyer's rights in law for damages resulting from Vendor's delivery of defective Goods.

12. Changes. Vendor shall adhere strictly to the requirements of this PO unless Buyer authorizes a change in writing. Buyer may make changes to any one or more of the following at any time: (a) description, quality, or quantity of Goods; (b) applicable drawings, designs, or specifications; (c) method of shipment or packing; (d) place of delivery; or (e) time of delivery. Vendor must notify Buyer in writing within 7 days of receipt of any change if Vendor believes the change causes an increase in the cost or the time required by the Vendor for performance of this PO. After Buyer receives Vendor's notification of a request to increase the cost or time of performance, Buyer shall inform Vendor if Buyer intends to proceed with such change. If so, Buyer and Vendor will negotiate the amount of increase in cost and/or time and execute a written modification to this PO. Any claim by Vendor for modification of this PO will be deemed waived unless the Vendor's claim is made in writing within 7 days of Vendor's receipt of Buyer's notice of proposed change.

13. Termination. Buyer reserves the right to terminate this PO and/or cancel delivery of the order (or portion thereof) under this PO at Buyer's sole discretion and without cause, upon written notice to Vendor at any time prior to delivery. Buyer shall have no liability to Vendor beyond payment of any balance owing for Goods accepted prior to Vendor's receipt of Buyer's notice of cancellation and for work in progress requested for delivery by Buyer. In addition to any other remedies that may be provided under this PO, Buyer may immediately terminate this PO upon written notice to Vendor, if Vendor: (a) fails to perform or comply with any of the terms of this PO; or (b) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy,

receivership, reorganization, or assignment for the benefit of creditors.

14. Insurance. If Vendor or its employees or agents will enter onto the Buyer's premises or the Project site in connection with this PO, Vendor shall provide insurance with limits of minimum coverage as follows or as otherwise required in the Prime Contract (whichever is greater): (a) workers compensation – statutory coverage; (b) commercial general liability – \$1,000,000 each occurrence, \$2,000,000 general aggregate; and (c) automobile liability – \$1,000,000 combined single limit (including coverage for all owned, hired, and non-owned automobiles). If applicable, Vendor shall name Buyer, Owner, Prime Contractor (if applicable), and/or any other entity that Buyer is required to name as additional insured (or to indemnify) under the Prime Contract as additional insureds on all liability insurance policies that Vendor offers to fulfill the requirements of this section. Any policies required under this section shall also contain waivers of subrogation rights in favor of Buyer and any additional insureds. If applicable, Vendor shall furnish Buyer with Certificates of Insurance as evidence of Vendor's compliance with these provisions upon Buyer's request. If Vendor is not performing work on or entering onto the Buyer's premises or the Project site, Vendor will nevertheless secure and maintain types and limits of insurance as is customary for a company of similar size and similar operations to Vendor in the jurisdiction or jurisdictions in which Vendor's operations take place in order to protect against injury or damage and to remain in compliance with applicable laws, regulations, or orders.

15. Indemnification. To the fullest extent permitted by law, Vendor shall indemnify, defend, and hold Buyer, Owner, Prime Contractor, and any other party Buyer is required to indemnify under the Prime Contract, including their respective agents, consultants, and employees (collectively, "**Indemnitees**") harmless from any and all claims, demands, causes of action in law or in equity, damages, penalties, costs, expenses, attorneys' fees, experts' fees, consultants' fees, judgments, losses or liabilities, of every kind and nature whatsoever (including without limitation, liquidated damages or other delay costs assessed against Buyer) arising out of or in any way connected with or incidental to the Goods furnished or Vendor's performance under this PO. Notwithstanding the foregoing, Vendor shall not be required to indemnify any Indemnitee for the proportion of fault, if any, attributable to such Indemnitee's active or sole negligence, or willful misconduct.

16. License. Vendor hereby grants to Buyer and Owner an irrevocable, non-exclusive, royalty-free license to use and sell the Goods, including any inventions or discoveries made, conceived, or actually reduced to practice in connection with the performance of this PO. Vendor shall indemnify Buyer from, and defend and hold Buyer harmless from and against, any allegations, claims, costs, demands, losses, expenses, liabilities, damages, judgments, actions, suits, fines, penalties, and attorneys'

or other fees, even if such claims are groundless, false, or without merit, arising from, related to, incidental to, or in any way connected to a claim that the Goods infringe upon the proprietary or other rights (including without limitation, patents, copyrights, and trademarks) of any third party.

17. Compliance with Laws. Vendor shall comply with all applicable federal, state, and local laws, regulations, and ordinances. Vendor shall maintain in effect all licenses, permissions, authorizations, consents, and permits that Vendor needs, as applicable, to carry out its obligations under this PO.

18. Waivers. No waiver by Buyer of any of the terms of this PO shall be effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this PO 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.

19. Governing Law. All matters arising out of or relating to this PO shall be governed by and construed in accordance with the laws of the State of California.

20. Disputes. Except as otherwise provided in the Prime Contract, the Parties agree that any appropriate state or federal court located in the County of San Diego, California shall have exclusive jurisdiction over any case, controversy, or dispute arising under or in connection with this PO and shall be a proper forum in which to adjudicate such dispute. The Parties consent to such jurisdiction for all purposes (both personal and subject matter). Neither Party shall cause or permit any delay in carrying out its obligations under this PO during any dispute or controversy, except by mutual agreement.

21. Attorneys' Fees. In the event either Party institutes suit or other legal proceedings in court against the other Party in connection with any dispute or matter arising under this PO, or in the event of an arbitration under this PO, the Party that prevails in such proceeding or arbitration shall be entitled to recover from the other Party its reasonable attorneys' fees and costs, to be determined by the court or arbiter. Such costs shall include investigative costs and expert witness fees.

22. Waiver of Consequential Damages. Except for liquidated damages (if applicable) and excluding losses covered by insurance, each Party agrees to waive all rights against the other Party for consequential, special, incidental, indirect, or punitive damages that may arise out of or relate to this PO.

23. Assignment. Vendor shall not assign any of its rights or delegate any of its obligations under this PO without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Term is null

and void. No assignment or delegation relieves Vendor of any of its obligations under this PO. Buyer may assign this PO or its rights and obligations under this PO at any time without the consent of the Vendor.

24. Successors. This PO shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, heirs, administrators, executors, and legal representatives, provided that nothing contained in this section shall be construed so as to authorize Vendor to make any assignment or transfer prohibited by this PO.

25. Relationship of Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this PO 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.