

## WEHR CONSTRUCTORS, INC. PURCHASE ORDER AGREEMENT

The material and/or performance of service covered by the attached Purchase Order Agreement shall also be subject to the following additional provisions which you (the Seller), in accepting this Agreement, agree to be bound by and comply with in all particulars to us (Wehr Constructors, Inc./the Purchaser):

1. ACCEPTANCE OF TERMS AND CONDITIONS. This order, which includes all documents expressly incorporated by reference (such as any drawings, specifications, models, forms, or other data including all documents identified and incorporated in Paragraph 2 below) and any accompanying amendments, constitutes an offer to purchase by Purchaser that may be accepted by Seller by signing the acceptance copy and returning it to Purchaser promptly. Acceptance of this order is expressly limited to the terms of this order and any acceptance by Seller that proposes additional or different terms shall constitute an acceptance of this order by Seller without such additional or different terms. Any proposal for additional or different terms in Seller's acceptance shall not, however, operate as a rejection of the offer. This order is not an acceptance by Purchaser of any prior quotation, proposal or offer to sell, but if for any reason this order is deemed to be an acceptance of a prior offer by Seller such acceptance is expressly conditional on Seller's assent to any additional or different terms contained in this order. In the event of failure to acknowledge and accept this Purchase Order in writing, we may elect to waive without notice written acknowledgement and acceptance, and to regard shipment of the material in whole or in part or the performance or commencement of performance of work or services specified therein as an acceptance of this order, which shall constitute acceptance by Seller of all provisions contained herein.
2. CONTRACT DOCUMENTS.
  - (a) The Purchase Order Documents consist of this Agreement, the prime contract, including the contract between owner and Purchaser and all contract documents enumerated therein, including applicable provisions incorporated in subsection (c) below, the conditions of the contract between the Purchaser and owner (general, supplementary and other conditions), the drawings, specifications, all addenda issued prior to execution of this Agreement, all documents incorporated, enumerated or incorporated by reference into the above, and modifications and changes issued after the date of this Agreement incorporated and adopted pursuant to the terms of this Agreement.
  - (b) The Seller represents that it has investigated, examined, inspected and thoroughly familiarized itself with the contract documents, the site and adjoining premises in connection with which the work covered by this Agreement is to be performed, and that it has thoroughly informed itself as to any difficulties in connection therewith, and that Wehr has made no representation of any kind or nature with references thereto not contained in this Agreement. Commencement of work or any portion thereof by the Seller shall be conclusive evidence of the above.
  - (c) As our subcontractor/seller, you are hereby bound to us by the terms of all contract documents and subcontract documents insofar as applicable to the work of the subcontractor/seller, and assume toward us to the same effect all obligations and responsibilities as we, under the contract documents, assume toward the owner and architect, including the same rights regarding terminating any subcontract that the owner may exercise over us under any provisions of the subcontract. Where a provision of the contract documents is otherwise inconsistent with this Agreement, this Agreement shall govern.
  - (d) No modifications of, additions to, or deletions of the terms or conditions of this Purchase Order Agreement, whether included separately by the Seller or upon the copy provided for the Seller's acceptance, or otherwise proposed by Seller, shall become a part of the Purchase Order Agreement unless accepted in writing by Wehr. It is further agreed that no terms contained in the Seller's quotation, offer, proposal or acknowledgment shall be a part of the Purchase Order Agreement unless specifically accepted by Wehr in writing.

3. SHOP DRAWINGS/DOCUMENTS.

(a) You shall timely prepare and provide shop drawings as directed by this Purchase Order. You shall furnish such shop drawings for approval by the architect/engineer (and Purchaser if so directed in the Contract Documents). You shall obtain such approval prior to fabrication of any items under this Agreement. Submittal data shall be prompt and complete to ensure scheduled delivery of equipment and/or materials pursuant to the contract documents and so as not to delay progress of the work. Approval of any drawing shall not relieve the Seller of any duty and responsibility to perform the work in the manner necessary to produce the results and as required by the contract documents.

(b) As-built documents and data shall be prepared, updated, maintained and recorded by you as applicable to your work and shall be submitted monthly, concurrent with your request for progress payments, for review and approval by us consistent with any relevant requirement in the Contract Documents (including the bid package and its contents). Such review and approval shall be a condition precedent to progress payment under the terms of this Agreement. Approval of any drawing shall not relieve you or any of your subcontractors of any duty and responsibility to perform the work in the manner necessary to produce the results required by the contract documents.

4. INSPECTION.

(a) All goods (which term includes without limitation raw materials, components, intermediate assemblies, tools and end products) provided under this order shall be subject to inspection by Purchaser and its customer (which term means any person or entity to whom any of the goods may be sold by or leased from Purchaser, including the owner as set forth in the contract documents). Inspection may be conducted at any reasonable place and time and in any reasonable manner prior to final acceptance of the goods by the Purchaser and its customer. Such a reasonable time includes the period of manufacture.

(b) If any inspection is made on the premises of Seller or its suppliers, Seller shall provide free of charge all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. Inspections on the premises of Seller or its supplier shall not unreasonably delay Seller's work.

(c) Final acceptance or rejection of the goods shall be made as promptly as practicable after delivery, installation and operation, except as otherwise provided in this order. Failure to inspect the goods or failure to detect defects by inspection shall neither relieve Seller from responsibility for nonconforming goods nor impose any liability on Purchaser, and any implied warranties of merchantability and of fitness shall survive such failures on Purchaser's part.

(d) In addition to any duties or obligations of Seller under this order, Seller shall create and carry out inspection and process control procedures acceptable to Purchaser and its customer covering the goods. Seller shall keep complete records of all inspection work. These inspection records shall be available to Purchaser and its customer during the performance of this order and for longer periods as may be specified in this order. It is Seller's responsibility to furnish the proper quantity called for in this order. Therefore, no variation in the quantities specified therein will be accepted as compliance with same, except by prior written agreement. We reserve the right to return excess shipments at your expense. If Purchaser elects to make payment in advance of the receipt of materials at destination specified, it is agreed by Seller that such prepayment shall not constitute a waiver of any rights or claims which Purchaser may have arising out of or connected with the inspection and acceptance of the merchandise after receipt of Seller's performance under this Agreement.

5. WARRANTIES.

(a) Warranties, guarantees and/or maintenance services as specified and applicable to the materials or

work required under this Agreement shall be the sole obligation and responsibility of you. Seller warrants with respect to all goods sold under this order that (i) such goods will be free of any claim by any third party, (ii) it will convey title to Purchaser of such goods, (iii) such goods will be new, of merchantable quality, free from all defects in design, workmanship and materials, (iv) if the Seller has any reason to know any particular purpose for which the Purchaser intends to use such goods, that they will be fit for the particular purpose for which they are purchased, and (v) such goods shall conform with the specifications, samples, drawings, designs, or other requirements (including performance specifications) approved or adopted by Purchaser.

(b) Any attempt by Seller to limit or negate any warranties or remedies of Purchaser in accepting or performing this order shall be void without Purchaser's written consent.

(c) All warranties shall survive inspection tests, acceptance and use by Purchaser and its customer.

(d) Seller's warranties shall cover the design and performance specifications of all goods supplied under this order or any suborder including any apparatuses and components furnished by Seller for the benefit of any party to which Purchaser may be liable. Seller shall indemnify Purchaser and its customer according to the terms of Section 7 below for any claims involving any goods provided under this order.

(e) The above clauses (a), (b), (c) and (d) shall apply in any case, whether or not Purchaser has furnished installation instructions.

(f) Any course of dealing, course of performance or usage of trade shall not exclude or modify any implied warranties. The above is in addition to and not in lieu of any other obligations or warranties you may have or rights or remedies we may have. You also agree to be responsible for and to correct any and all damages resulting from any defective materials or workmanship and your work to correct the workmanship and your work to correct the above. Emergency repairs or protection by the owner or Wehr shall not invalidate this warranty.

6. **REJECTIONS.** If any goods ordered by Purchaser are found at any time to be defective or otherwise not in conformity with the order, Purchaser may (a) reject and return at Seller's expense all or a portion of the nonconforming goods and/or (b) require Seller to repair or to replace the nonconforming goods with conforming goods promptly at Seller's expense. If Purchaser elects option (b) above and Seller fails to repair or replace promptly, Purchaser may at its option, inspect, sort and repair or replace the goods at the Seller's expense. Furthermore, since time is of the essence in modifying, repairing or replacing nonconforming items of goods to Purchaser's satisfaction, Purchaser or its customer shall be entitled to make "on the spot" inspections to find potential corrections that are necessary, but that do not delay construction, operation or production. These "on the spot" inspections will give Seller notice and an opportunity to inspect the defects and make the necessary corrections. Purchaser shall not be obliged to accept any nonconforming item of goods even though a substituted, or substandard item, could satisfy the use intended by Purchaser. Purchaser may, however, elect either (i) to accept the item as delivered and abate the purchase price payable by the difference in value between the item delivered and the item as ordered with an additional abatement for any cost or expense in installation resulting from the nonconformity as determined by Purchaser, or (ii) without constituting acceptance, to install the item delivered for temporary use, in which event Seller promptly shall deliver the conforming replacement item for installation by Purchaser. Seller shall pay Purchaser the cost and expense of installing the conforming replacement item. Acceptance of defective materials shall not preclude Purchaser from rejecting other defective materials delivered or work performed under this order, because of the same or other defects.

7. INDEMNITY. Seller agrees to indemnify, defend, and hold harmless Purchaser from and against any and all claims, causes, actions, damages, liabilities, losses, costs and expenses, including attorneys fees, arising out of any actual or alleged personal injury or death or damage to property resulting in whole or in part from any actual or alleged defect in any goods sold to Purchaser or service performed by Seller under this order, including improper design of said goods or failure of said goods to comply with specifications or with any express or implied warranties of Seller, or as a result of said goods being manufactured, packaged, labeled, shipped or sold, or said services being performed, in violation of any federal, state or local law, rule or regulation, or as a result of any field modification or recall campaign that Purchaser is required to undertake for its products which incorporate goods procured under this order where said goods are alleged to be or are actually defective. Seller also agrees, on request, to produce a policy or policies of product liability insurance with vendor's endorsement naming Purchaser as an additional insured, in such amounts and with such company or companies as shall be satisfactory to Purchaser. All such policies shall provide that coverage thereunder shall not be terminated without at least ten (10) days prior written notice to Purchaser.

8. CHANGES.

(a) No charges for extra work will be recognized without written authority executed in the same manner as the original purchase order prior to performing such work. This order must not be billed at higher prices than last charged or quoted, without our written approval as set forth herein.

(b) In the event we request you to review a proposed modification which may affect your work, you shall respond in writing within 7 days after receipt of said request or other reasonable limits as we may provide, stating the effect of the proposed modification including details of additional cost and time required, otherwise you shall accept our determination as to the effect of the proposed modification or change. We may, however, at any time without notice to your surety, by written order designated to be a change order, make any change in the work within the general scope of the Agreement notwithstanding the above.

(c) No work which you deem to be a modification, change or extra work shall proceed without written authority from us executed in the same manner as our original agreement. Should we be unable to agree as to the value of such work to be added or omitted, we may, at our option, order you to proceed by written order as set forth above omitting the value of such work to be added or omitted. We reserve the right, at our option, to submit to the architect, engineer or owner's representative the issue to determine the value of the work, whose decision shall be binding to the limits stated in the Contract Documents.

(d) Should you be required to perform additional work by order of us as set forth above, for which the amount of compensation is not previously agreed upon, you shall prior to performing such work submit to us a proposal describing the estimated describing the estimated quantities and costs involved, and shall keep accurate, detailed and itemized records of the costs of any such change, reporting said information to us in the form and manner prescribed by us. At least as often as to include with each application for payment you make, and if requested by us as often as each day, you shall furnish certified copies of all time sheets, payrolls, invoices, vouchers, receiving and inspection reports and other documentation evidencing and specifically segregating those changes which evidence your expenditures you deem as a result of such change. Receipt and acknowledgement of the above by us or the owner shall not be construed or deemed as acceptance of the accuracy and validity of any portion thereof by us or the owner, until such time as final change order amounts are determined to be appropriate, proper, and you receive a written order from us executed in the same manner as our original agreement.

(e) Should you fail to comply with the above, you expressly waive any claim for additional cost in the performance of the modification, change or extra work. In no event will you be paid any amount in excess of those costs and claims submitted by you as set forth above, and you further expressly agree you will

not receive or be paid by us more than that amount we receive from the owner on account of any claim for amounts due for modifications, changes or extra work.

(f) Any equitable adjustment and/or damages the Seller may be entitled to receive on account of a properly and timely made delay and/or change claim shall be limited to its demonstrated additional direct costs of performance caused by such delay/change and shall not include claims for lost profits, attorneys fees, and/or consequential damages.

9. NON-ASSIGNMENT AND DELEGATION. Any attempt by Seller to assign its rights or interests under this order or to delegate its obligation owed under this order without written permission from the Purchaser is void.

10. SET-OFF. Purchaser shall be entitled at all times to set off any amount owing at any time from Seller to Purchaser or any of Purchaser's affiliated companies against any amount payable at any time by Purchaser in connection with this order or otherwise.

11. COMPLIANCE WITH LAWS.

(a) Seller agrees to comply with the applicable provisions of any federal, state or local law or ordinance and all lawful orders, rules and regulations, and any provisions, representations, agreements, or contractual clauses that must be included or incorporated by reference or by operation of law in the contract resulting from acceptance of this order.

(b) If hazardous substances, of a type of which an employer is required by law to notify its employees, are being used or sent on the site by Seller, your subcontractors or anyone directly or indirectly employed by them, then you prior to delivery and exposure of any employees on site to such a substance, and in any event in compliance with all laws, rules, regulations and permits of state, federal and local governments, shall give written notice of the chemical composition thereof to us and shall furnish any other material safety data sheets required, and shall properly train and advise your employees, subcontractors, sub-subcontractors, agents and invitees as to handling of and compliance with all local laws and regulations with regard to such hazardous substances. You agree to indemnify and hold us harmless with regard to any and all losses and claims, including but not limited to remedial costs, investigative costs, defense costs and/or attorneys fees, incurred as a result of said materials and/or their use or disposal.

(c) Seller shall be deemed to represent that the goods to be furnished hereunder were or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, including the requirements as to records and, if requested, shall insert a certificate to that effect on all invoices submitted in connection with this order.

(d) Seller warrants that it will at all times comply with the Wehr Code of Conduct (available for review at [www.wehrconstructors.com](http://www.wehrconstructors.com)), and Wehr's adopted policies applicable to its sellers and subcontractors concerning workplace safety, drug testing and other matters (available for review at [www.wehrconstructors.com](http://www.wehrconstructors.com)).

12. FOR WORK ON PURCHASER'S OR ITS CUSTOMER'S PREMISES. If Seller's work under this order will take place on the Purchaser's or its Customer's premises, Seller shall take all necessary precautions to prevent any injury to person or property during such work period, except to the extent that any such injury is due solely and directly to Purchaser's or its Customer's negligence, and Seller shall indemnify Purchaser and its Customer against all claims, causes, damages, losses, liabilities or expenses, including attorney's fees which may result in any way from any act or omission of the Sellers, its agents, employees or subcontractors. Seller shall also maintain public liability property damage insurance, employee's liability insurance and compensation insurance as will, in Purchaser's sole judgment, protect Purchaser from said

risks and from any claims under any applicable Worker's Compensation and Occupational Disease Acts. Certification of such insurance shall be provided to Purchaser prior to commencement of work.

13. CONFIDENTIALITY OF INFORMATION.

(a) Seller shall keep confidential any technical process or economic information derived from drawings, specifications and other data furnished by Purchaser in connection with this order. Seller shall not divulge or use, directly or indirectly, such information for the benefit of itself or any other party without obtaining Purchaser's prior written consent.

(b) Any information which Seller disclosed to Purchaser, and which in any way relates to goods or services covered by this order, shall not be deemed to be confidential or proprietary information, unless otherwise specifically agreed to in writing by Purchaser. Such information shall be acquired by Purchaser free from any restrictions as part of the consideration for this order. Furthermore, Seller agrees not to assert any claim against Purchaser by reason of any actual or alleged use of Seller's information by Purchaser or its Customer. Seller agrees not to release any advertising copy that mentions Purchaser or quotes the opinion of any of Purchaser's employees unless such copy or opinions are approved by Purchaser in writing.

14. INTELLECTUAL PROPERTY. Upon written notice, Seller shall defend any suit or proceeding brought against Purchaser or its Customer that is based on a claim that any article or apparatus constituting goods furnished under this order as well as any device or process resulting from the use of such goods constitutes an infringement of any American or foreign trademark, copyright, or patent, or any other right of a third party. Purchaser shall provide such authority, information, and assistance (at Seller's expense) as may be reasonably necessary for the defense of such actions. Seller agrees to indemnify, defend and hold harmless Purchaser and its Customer against any and all claims, causes, damages, liabilities, losses or expenses, including attorney's fees, in connection with any such suit or proceeding, whether or not Purchaser or its Customer is a party hereto. This indemnity shall not, however, apply to any such claims, causes, damages, liabilities, losses or expenses arising out of compliance by Seller with specifications furnished by Purchaser. If an injunction is issued, Seller shall, at its own expense and Purchaser's option, (i) procure from Purchaser and its Customer the right to continue using the article or apparatus, part or device, (ii) replace the same with a non-infringing equivalent, or (iii) remove the infringing item and refund the associated purchase price, transportation cost and installation cost.

15. TRANSPORTATION AND RISK OF LOSS.

(a) Transportation charges and risk of loss are Seller's responsibility. Shipments shall be made on a freight prepaid basis. Since transportation related costs are included in the price of goods purchased, invoices should not show any separate line items for transportation.

(b) Risk of loss from any casualty to the ordered goods shall remain on Seller until goods have been shipped in compliance with the agreed upon transportation terms. As to nonconforming goods, risk of loss and transportation expense shall remain at all times with the Seller.

(c) In no case shall Seller deviate from Purchaser's routing instructions unless otherwise directed and agreed to in writing by Purchaser. If Seller does not comply with Purchaser's schedule, however, Purchaser may require that shipments be made by air freight or other expedited modes of transportation. Any additional transportation cost incurred by Purchaser shall be billed back to Seller.

16. ANTICIPATION OF DELIVERY SCHEDULE. Unless otherwise agreed in writing, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Purchaser's requirements.

17. PRICES. All prices are firm and shall be as stated on the face of this order. If Seller reduces its published prices for goods or services covered by this order before Seller completes performance, however, such reduced prices shall apply to any undelivered goods or unperformed services. If no price is stated, the goods or services shall be billed at the price last quoted or paid or at the prevailing market price, whichever is lower. No charges of any kind, including, but not limited to charges for boxing, packaging, loading, bracing, or cartage, will be allowed, unless authorized by Purchaser in writing executed in the same manner as this agreement.
18. TAXES. The prices set forth in this order include all federal, state and local taxes applicable to the goods and services furnished by Seller, whether or not such taxes are set forth separately on Seller's invoices. Inasmuch as your price includes sales tax, please inform us the serial number of the permit under which you are authorized to collect the sales tax with the obligation of making remittances accordingly to the appropriate Department of Revenue.
19. WORK STOPPAGES. It is understood that contracts will be awarded and labor employed on the job without discrimination as to whether employees of any contractor or subcontractor are members or are non-members of any labor organization. You agree that in the event of a work stoppage resulting from a labor dispute directed at you, we have the right to proceed as set forth in Paragraph 22 below, in addition to any other provisions and remedies as set forth herein.
20. PAYMENTS. Payments on this purchase order will be made subject to all provisions as stated herein, and to the extent not inconsistent with this Agreement, payments shall be made to the same terms as specified on the prime contract and all Contract Documents incorporated therein under which the work is performed. No progress payment under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no payment shall be construed to be acceptance of defective work or improper materials. Final payment is further subject to our receipt from you of all written guarantees, warranties and bonds relating to the work, final waivers of lien or possible liens, and complete releases from you and any subcontractor, material supplier or other supplier of labor, materials, or other items relating to the work under this Agreement, and an affidavit from you certifying payment in full for all items relating to the work. Payment of any progress payment, final payment, or any approved portion of the Seller's monthly estimate shall be conditioned on receipt by Wehr of payment from the owner. Seller agrees that payment to Wehr by the Owner for the goods purchased from Seller is a condition precedent to the Seller's right to payment and that as a result thereof, the risk of nonpayment by the Owner is shared equally by Wehr and the Seller.
21. AFFIDAVITS, RELEASES AND LIENS.
  - (a) You agree to pay for all materials and labor used or in connection with the performance of this agreement through periods covered by previous payment by us, and agree to furnish us periodically on request by us affidavits or other satisfactory evidence of compliance with the above, or any amounts owed for labor or materials which are or might become liens against the work or property. You further agree to provide a sworn statement of all parties who furnish labor or materials to you, and you will require your subcontractors to similarly furnish said affidavits or statement on request.
  - (b) You agree to furnish us written releases in a form acceptable to us and written releases of lien from all persons, firms or corporations that may have furnished you any services, equipment, material, or may have in any way had dealing and agreements in connection with your work under this agreement.
  - (c) You agree to turn the materials and/or work over to us in good condition to the final approval of the architect, in compliance with all applicable contract documents, free and clear of all claims, encumbrances, or other liens, and shall indemnify and save harmless Wehr and the owner from all claims, encumbrances or liens growing out of the performance of this agreement, and you will at your cost and

expense, including attorney fees, defend all suits to establish such claims and will pay any judgment, claim or lien so established.

(d) If at any time there shall be evidence of lien or claim for which, if established, we or owner might become liable, and which is chargeable to Seller, we shall have the right to retain out of any payment due, or to become due under this agreement or any other agreement between us and you, an amount sufficient to indemnify us and owner against such lien or claim, and charge or deduct all costs of defense with respect thereto, including reasonable attorney fees. Should any claim or lien develop after all payments are made, you shall refund to us all monies that we may be compelled to pay in discharging such claims or liens, or incurred in collecting said monies from you.

22. DEFAULT – TIME IS OF THE ESSENCE OF THIS PURCHASE ORDER. Time being of the essence, the Seller agrees to promptly deliver the services, obligations and materials at the time and in accordance with the performance and delivery requirements specified in the purchase order.

(a) By written notice of default to Seller, Purchaser may terminate the whole or any part of this order in any one of the following circumstances: (i) if Seller fails to perform within the time specified in this order or within any extension agreed upon as a change order to this Agreement, (ii) if Seller defaults in the performance or observance of any of its other obligations contained in this order, or (iii) if Seller endangers performance of this order by failing to make progress. Seller will have ten (10) days to cure following receipt of notice from Purchaser specifying any of the failures mentioned in (a) (i) – (iii) of this section. Upon termination, Purchaser may use his discretion in procuring goods or services similar to those so terminated, in which case Seller shall continue performance of this order to the extent not terminated and shall be liable to Purchaser for any excess costs for such similar goods or services.

(b) Rather than terminate for default, Purchaser may in its sole discretion elect one or both of the following: (1) an extension of delivery schedule and (ii) a waiver of other deficiencies in Seller's performance, in which case an equitable reduction in the purchase order price shall be negotiated.

(c) In the event Seller has any reason to anticipate difficulty in complying with the delivery date or in meeting any of the other requirements of this order, Seller shall promptly notify Purchaser in writing. Except to the extent the owner may be liable to Wehr, Wehr shall not be liable to you should an earlier or later completion date be required due to job conditions, including neglect or default of owner, architect or engineer, fire or other casualty, riots, strikes or other combined action of workmen or others, acts of God, weather, or other causes beyond our control, or on account of any circumstances caused or contributed to by you or your subcontractors or materialmen.

23. DISPUTES.

(a) You are liable to Wehr for any and all loss or damage to Wehr, or to the owner for which Wehr may be liable, as a result of any delay on the part of you, your subcontractors or materialmen in the prosecution or completion of your work or the entire building or structure by the date agreed upon between the owner and Wehr, with due allowances made for contingencies below.

(b) Should you be delayed in the prosecution of your work by the act, neglect or default of us, owner, architect, or others, or by any damage caused by fire, lightning, windstorm or other casualty for which you are not responsible, then you shall submit a notice of claim for extension of time within seven (7) days of your knowledge of the circumstances leading to the delay. No time extension shall become operative until approved in writing by us executed in the same manner as our original agreement. Any such extension, or permitting you to continue after the time to complete the work has expired, shall not be construed as a waiver of any or all claims for loss or damages for breach of one or more of the provisions of this Agreement. Should you fail to comply with the above, you waive any and all claims for



extensions, and any and all claims for damages, whether direct or consequential, on account of any such delay.

(c) Should we refuse to approve such claim for extension, the matter shall, at our option, be referred to the architect, engineer, or owner's representative for determination, whose decision shall be final subject to the limits stated in the Contract Documents. You expressly agree that such an extension of time for completing the work precludes, satisfies and cancels any and all claims you may have against us on account of such delay.

(d) You shall make all claims for extension of time, delays, extras, or damages of any nature for which the owner may be responsible in the method and amount as provided in the Contract Documents for like claims by us on the owner, and in sufficient time for us to comply with the Contract Documents for making such claim to the owner. We shall only be liable to you to the extent the owner is liable to us for each claim or extra.

(e) Except as provided otherwise in this agreement, any dispute concerning a question of fact arising under this agreement which is not resolved shall be decided by us, which on request of you will be reduced to writing and furnished to you. Our decision shall be final and conclusive unless within twenty (20) days from the date of receipt of such writing, you make written demand for relief on us. Should you desire to pursue an action or appeal regarding an adverse final decision rendered by the owner or his representative that affects your interest, and provided our interests are unaffected, you agree to bear full costs and sole responsibility for prosecuting such an action, including attorneys' fees. You shall carry on the work and maintain the progress schedule during any dispute or legal proceedings, unless otherwise agreed to in writing by the parties hereto.

(f) Any dispute resolution procedures contained within the contract between Wehr and the Owner are expressly made applicable to this Purchase Order Agreement.

24. TERMINATION FOR OTHER CAUSES. If any federal, state or local governments or agencies of such governments having jurisdiction shall direct us to undertake or refrain from undertaking work or certain types of work and, as a result thereof, the merchandise or services ordered herewith shall become unnecessary, it is expressly agreed that we may, without liability, cancel this order in whole or in part by written notice to you. Payment for any approved deliveries of material or performance prior to such termination will be made on same basis as settlement of prime contract in connection with which this purchase order was issued.
25. INSOLVENCY. Purchaser may terminate this order without liability in any of the following circumstances: (i) if Seller ceases to conduct its operations in the normal course of business for any reason whatsoever, including its inability to meet its obligations as they mature, (ii) if any proceeding under the bankruptcy or insolvency laws is filed by or against Seller, (iii) if a receiver for Seller is appointed or applied for, or (iv) if an assignment for the benefit of creditors is made by Seller. In the event of termination for any reason, Purchaser shall have the right immediately to retake and recover all drawings, blueprints, specifications, and any other materials furnished to Seller.
26. ELECTION OF REMEDIES. All remedies provided in this order are in addition to all remedies by law or by equity. Election of one remedy shall not be deemed a waiver of the right to seek any other remedy.
27. ATTORNEYS' FEES. If Seller should default in other provisions of this order, and Purchaser shall employ an attorney to enforce any of this order's provisions or to collect damages for breach of this order, Seller shall pay to Purchaser reasonable attorneys' fees charged to Purchaser.

28. WAIVER. No claim or rights arising out of a breach of this order can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party in the same manner as this agreement. Payment, for example, shall not constitute acceptance of goods nor waiver of defects or warranties. The failure of Purchaser to enforce at any period of time any of the provisions of this order shall not be construed to be a waiver of such provisions nor of the right of Purchaser thereafter to enforce each and every such provision.
29. APPLICABLE LAW. The laws of the State of Kentucky shall govern the interpretation of this order and the rights of Purchaser and its Customer and Seller and to the extent permitted under Kentucky law, venue as to any dispute shall lie in Jefferson County, Kentucky.
30. ENTIRE AGREEMENT/ENFORCEABLE TERMS.
- (a) This order is intended by the parties as a final expression of their agreement with respect to such terms as are included herein, and constitutes the complete and exclusive statement of the terms of their agreement except for such changes as may be subsequently agreed to in writing pursuant to the terms of this Agreement by Purchaser. No course of prior dealings between the parties and no usage of the trade shall be relevant to determine the meaning of this order even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.
- (b) Should any part, term or provision of this Agreement be declared or determined by any court to be illegal, invalid or unenforceable, the validity, legality or enforceability of the remaining parts, terms and provisions shall not be affected thereby and the illegal, invalid and unenforceable parts, terms or provisions shall not be deemed a part of this Agreement.

This Purchase Order Agreement Supplement shall be available for review and printing by Seller at [www.wehrconstructors.com](http://www.wehrconstructors.com) and shall be binding on the parties and incorporated within the Purchase Order Agreement, by reference, as if set-forth in full within the Purchase Order Agreement, except as amended in writing signed by both parties.

MISCELLANEOUS. Titles and captions of or in this order are inserted for convenience only and in no way define, limit, extend, or describe the scope or intent of this order.