

THIS PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. **COMPLETE AGREEMENT:** This Purchase Order consists of these terms and conditions, and the applicable terms, conditions, plans and specifications of that certain prime contract identified on the facing page hereof, if applicable. Seller's acceptance is limited to the terms and conditions contained in this Purchase Order. Commencing performance or making deliveries or any acknowledgement of this agreement by Seller, shall constitute an acceptance of the terms of this agreement by Seller. Purchaser is bound only by terms and conditions of this Purchase Order notwithstanding any proposals, terms or conditions additional to or different from those accompanying Seller's performance or acknowledgement.
2. **DEFINITIONS.** (a) Purchase Order. This form and any additional terms and conditions incorporated into or attached hereto when properly executed on behalf of Purchaser and Seller and bearing its order number, is the only form which will be recognized by Purchaser as authority for charging merchandise, work or services to its account. (b) Seller is the party so identified on the face of this Purchase Order. (c) Purchaser is Monterey Mechanical Company, its divisions and affiliated corporations, or a joint venture partnership managed by it. (d) Goods is personal property of every type, kind and description as specifically described in the Purchase Order. (e) General Contract is so identified on the face of this Purchase Order.
3. **OVERAGES AND SHORTAGES.** Shipment of goods in quantities exceeding those ordered shall be at Seller's risk and if Seller requests return of those goods, Seller shall bear the expense thereof. Goods purchased hereunder which are packed by Seller shall be subject to Purchaser's count at the jobsite and shortages shall be made good by Seller or, at Purchaser's option, the price of missing goods shall be refunded or credited to Purchaser. Purchaser's count will be accepted as final and conclusive on all shipments not accompanied by packing list.
4. **INVOICING AND PAYMENT.** A notice of shipping receipt must be sent to Purchaser at time the goods are shipped, which shall state the number of the Purchase Order, the kind of goods, the Seller's name and the route by which shipment is made. Seller's bills of lading shall contain commodity descriptions which will produce the lowest lawful freight charges and Seller shall reimburse Purchaser for any penalty or additional charges due to use of improper commodity descriptions. Any moneys due for merchandise, work or services furnished under this Purchase Order may, at the option of Purchaser, be applied by it to the payment of any sums which Seller may owe to it. Purchaser may withhold payment due under this agreement pending receipt of Lien Waiver from Seller and its subcontractors and vendors stating they have been paid in full and no unpaid claims are outstanding for work under this agreement.
5. **RISK OF LOSS.** If goods to be furnished hereunder are sold F.O.B. its ultimate destination, Seller shall deliver the merchandise to Purchaser at such point, and Seller shall assume and bear all loss and damage to the goods from any cause whatsoever until it is delivered to purchaser at such point. If goods are to be delivered to purchaser at some point other than its ultimate point of destination the goods shall be delivered by Seller to a common carrier at such specified point, properly consigned to Purchaser at the point of ultimate destination, and Seller shall assume and bear all loss and damage to the merchandise from whatsoever cause until said goods are delivered to such carrier; but upon delivery of said goods to such carrier, any loss or damage thereof thereafter occurring shall be borne by Purchaser. If Seller fails to deliver goods of the quantity and quality specified within the time and under the conditions herein specified, Purchaser may, at its option cancel this Purchase Order and decline to accept and pay for any goods, shipped or unshipped; and upon the exercise of such option Purchaser may buy the goods elsewhere and charge Seller with any loss and expense incurred thereby.
6. **INSPECTION.** All goods hereby ordered are subject to the inspection of the Purchaser upon arrival at destination, despite payment prior to arrival. If upon inspection such goods are found to be unsatisfactory because of defective material, inferior quality or workmanship or for failure to meet any other requirements of this order, it will be returned to Seller and all amounts theretofore paid by Purchaser to Seller on account of the purchase price, together with any costs incurred by Purchaser in connection with the handling and shipment of goods shall be repaid by Seller to Purchaser and Seller shall not thereafter ship to Purchaser other goods to replace such unsatisfactory or rejected goods unless thereafter Purchaser shall in writing, order such goods to be replaced. Seller further agrees to correct and/or replace, at its own expense, any failure of the items covered by this Purchase Order to meet Purchaser's requirements and/or any defects in the materials and/or workmanship which may develop within one (1) year after delivery of the goods to purchaser or as required in prime contract. Purchaser reserves the right, even after it has paid for said merchandise, to make a claim against Seller for credit on account of any goods hereby ordered which does not prove to be satisfactory or which is defective.
7. **WARRANTIES.** Seller warrants to Purchaser and to the owner to which the goods are being furnished that the goods will correspond with the description of the same on this Purchase Order, will conform to the specifications, drawings, samples or other description furnished or adopted by Purchaser, will be fit and sufficient for the purpose intended, will be the quality specified (or, in the event no quality is specified, will be of best and merchantable quality), will be free of all defects in workmanship and materials, and will operate and function satisfactorily and reliably. Approval of design by Purchaser or acceptance of the goods by Purchaser shall not release Seller from its obligations under the foregoing warranties. All warranties implied by law or usage or trade are hereby incorporated herein. Seller warrants that said goods are free and clear of all liens, encumbrances and security interests and all goods shall be new and unused in their entirety and that Seller has a good marketable title to the same and Seller agrees to hold Purchaser free and harmless against any and all claims against said goods.
8. **PATENT INDEMNITY.** Seller agrees that the goods covered by this Purchase Order do not infringe upon any United States Patent trademark, or copyright and that Seller will at its own expense, hold Purchaser harmless from and defend it against any claim, demand, damages or liability asserted against Purchaser on account of any claimed infringement, together with all costs in connection therewith (including attorney's fees).
9. **DEFAULTS.** Time is of the essence in this agreement. If Seller fails to perform any of its obligations hereunder, Purchaser shall be entitled to all remedies provided by law and to recover all consequential and incidental damages including replacement and repair costs. If Seller becomes insolvent or makes an assignment for the benefit of creditors, or files or becomes subject to receivership or reorganization or bankruptcy proceedings, or becomes involved in labor difficulties, which in Purchaser's opinion threaten Seller's ability to perform in a timely manner, Purchaser may, in addition to any other rights or remedies it may have hereunder or at law, terminate this Purchase Order. Upon written notice to Seller of a rejection of nonconforming materials or to specify with particularity any defect in nonconforming materials after rejection acceptance thereof will not bar Purchaser from pursuing any remedies for breach which it may otherwise have.
10. **COMPLIANCE.** In the performance of this Purchase Order, Seller shall strictly comply with all applicable laws, orders, ordinances, rules and regulations, whether federal, state or local, and upon request by Purchaser, Seller shall furnish such evidence of compliance as Purchaser may require at any time. Without limitation on the generality of the foregoing, Seller shall strictly comply with all applicable laws, orders, ordinances, rules and regulations relating to payment of wages, hours of labor, prices and other matters which may be binding upon Purchaser in connection with any work or contract for or in connection with which the goods to be furnished by Seller hereunder are intended to be used.
11. **INDEMNITY.** By acceptance of this Purchase Order, Seller assumes all risks in the furnishing of the goods required by the Purchase Order, and will indemnify, hold harmless and defend Purchaser and/or the owner to which the goods are being furnished against any and all losses, damages, liabilities and claims of any kind whatsoever which may arise in any manner whatsoever in the performance of this Purchase Order including, but not limited to, losses of goods covered by this Purchase Order and injuries to property and to persons, including death.
12. **PURCHASER'S PROPERTY.** In the event that Seller shall, in the performance of this Purchase Order, have in its possession property of Purchaser, Seller shall be deemed an insurer thereof and shall be responsible for its safe return.
13. **TAXES.** The prices of the goods covered by this Purchase order shall, unless otherwise noted, include (a) all federal, state and other taxes; and (b) all charges for packing, loading and draying. Seller shall pay before delinquency all applicable sales, use and other taxes and/or contributions of whatever kind and however imposed, now or hereafter imposed, directly and indirectly, upon or measured by the goods supplied under this Purchase Order and/or measured wages, salary or other remunerations paid to persons employed in connection with the performance of this Purchase Order and Seller shall indemnify Purchaser against any expense and liability in connection therewith, shall make all required reports, and shall credit Purchaser with such tax credits as Seller is entitled to by law in connection with this Purchase Order.
14. **DISCOUNTS.** Seller shall state its payment and discount terms on invoices. Discount period shall begin from date Purchaser receives invoices or goods, whichever arrives last. Delay caused by correction of errors and omissions shall extend the discount period and shall be just cause for withholding settlement without loss of cash discount by Purchaser.
15. **ASSIGNMENTS.** This Purchase Order shall not be assigned, transferred, or sublet in whole or part by Seller, by operation of law or otherwise, unless Purchaser's written consent thereto is first obtained. If such written consent is obtained, this Purchase Order shall inure to the benefit of and be binding upon the successors and the assigns of the parties hereto.
16. **PARTS, BOOKS AND MANUALS.** Seller shall furnish, for each machine or unit of equipment delivered hereunder, two (or more if required elsewhere herein) complete sets of the manufacturer's parts books, instructions and manuals for all components and units, including those manufactured by others. In addition, Seller shall furnish, for each different type, size or class of machine or equipment delivered, two complete sets of structural "as-built" drawings and specifications and, for each machine or unit of equipment which is knocked down or disassembled for shipment, two complete sets of assembly drawings or diagrams, piece marking lists and instructions. One complete set of the above shall be boxed or otherwise securely packed so as to prevent loss or pilferage and shipped with the machine or equipment to which it applies and the remaining set or sets, unless otherwise specified herein, shall be delivered to Purchaser by prepaid mail or express at the address shown on the face hereof. Seller will also provide all manufacturers' certification and documentation as may be required by Purchaser.

THIS PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

17. CHANGES. Seller is entitled to an equitable adjustment in compensation and time of performance hereunder if Purchaser rather than owner orders changes or otherwise delays Seller's performance hereunder. In any event, the Seller shall proceed with performance of the work hereunder as changed.

18. LEGAL. This Agreement shall be interpreted under the laws of the State of California, United States of America. If legal action is required to enforce any provision of this agreement, the prevailing party shall be entitled to all costs of recovery including legal fees.

19. FEDERAL AID PROJECTS. In the event this Purchase Order pertains to performance by Purchaser of a federal or federal-aid public contract, Seller acknowledges and agrees to the inclusion of any provision required to be included in this Purchase Order by any applicable law, order, ordinance, rule or regulation, specifically including but not limited to the following regulations: (a) The Davis-Bacon Act, Contract Work Hours & Safety Standards Act-Overtime Compensation, Apprentices Trainees, Payrolls and Basic Records Act, Compliance with Copeland Regulations, Withholding of Funds, Subcontracts and Contract Termination-Debarment, A.S.P.R. 7-602.23 (a)(vii), F.P.R. 1-12.303; (b) Small Businesses and Minority Small Disadvantaged Businesses, A.S.P.R., 7-104.14; F.P.R. 1-1-1310-2, 1-1.710-3; (c) Service Contract Act of 1965, A.S.P.R. 7-1903.41 F.P.R. 1-12.904.1; (d) Audits and Records Clause A.S.P.R. 7-104.41; F.P.R. 1-3.814.2; (e) Subcontractor Cost or Pricing Data, A.S.P.R. 7-104.42; F.P.R. 1-3.814-3; (f) Labor Surplus Area Concerns, A.S.P.R. 1-805.2 and 1-805.3; F.P.R. 1-1.805-2, 1-1.805-2, 1-1.805-3; (g) Certification of Non-Segregated Facilities, 41 C.F.R. 60-1.8. Seller further warrants that to the extent the same are applicable it will strictly comply with all laws, ordinances, orders, rules and regulations relating to the eligibility of merchandise, work or services for use on public contracts. If the contract or subcontract for which the merchandise, work or services covered by this Purchase Order are intended to be used is subject to the Renegotiation Act of 1951, as amended, this Purchase Order shall also be subject to such Act.

20. TERMINATION. (a) Default - Purchaser may terminate this Purchase Order or any part thereof by written notice if Seller fails to make deliveries within the time specified on in accordance with agreed schedules (unless such failure be due to acts of God, strike, or other causes beyond Seller's control), if Seller fails to comply with the terms and conditions of this Purchase Order and does not cure such failure within a period of ten (10) days after written notice thereof, or Seller makes assignment for the benefit of creditors, becomes insolvent or subject to proceedings under any law relating to bankruptcy, insolvency or the relief of debtors. Should Purchaser elect to terminate for default in accord with this paragraph, Purchaser may take possession of all or any of the items to be supplied hereunder in Seller's possession, without regard to stage of completion and may complete such items for Seller's account, or may manufacture or procure items similar to those to be supplied hereunder and charge any excess cost or expense occasioned thereby to Seller's account. In all events, Purchaser shall not be or become liable to Seller or anyone claiming through or under Seller for any portion of the cost or price of any items Purchaser elects not to accept following notice of termination. (b) Purchaser's Convenience - Purchaser may terminate this Purchase Order for its convenience in whole or part by giving two (2) days advance written notice to Seller. In the event of such termination, Seller may claim its reasonable costs incurred prior to the effective date of termination plus a reasonable allowance for profit on the portion of the work complete, all to be determined in accordance with generally accepted accounting procedures, provided, however, that the total sum payable upon termination shall not exceed the Purchase Order price reduced by payments previously made. If it appears that Seller would have sustained a loss on the entire order had it been completed, no profit shall be allowed. As to partially completed work or raw material included in Seller's costs, Seller shall hold the same for disposition in accordance with Purchaser's instructions.

21. IMPORTANT SAFETY NOTICE. The Hazardous Substances Act of 1983, Sec. 5194 Title 8 of the California General Industry Safety Orders requires material safety data sheets on designated materials. Please forward this information on all materials purchased herein that are within those guidelines.

22. PERFORMANCE AT SITE. In the event this Purchase Order requires the performance or installation of work or merchandise by Seller upon any property or project of Purchaser, the following conditions shall also be applicable:

(a) Seller shall take precautions to protect all property and persons from damage or injury arising out of its work and shall comply with all fire, safety and other applicable regulations prescribed by any governmental agency and by Purchaser and/or owner of the project upon which work is being performed and shall be responsible for the observance thereof by all subcontractors, employees, agents and representatives of Seller and its subcontractors. Seller shall obtain at its own expense and provide Purchaser with proof of insurance coverage satisfactory to Purchaser for workmen's compensation and property damage, public liability, personal injury and employer's liability.

(b) Seller shall keep the premises and work free and clear of all mechanics and materialman's liens or claims; Seller shall promptly pay for all labor and material and if Seller fails to do so Purchaser may pay the same and deduct the amount of such payments from sums due Seller hereunder; and Purchaser may withhold any payment to Seller until receiving such affidavits, waivers and releases with respect to claims for labor and materials as purchaser may require.

(c) The work shall remain at Seller's risk prior to written acceptance by Purchaser and Seller shall replace at its own expense all work damaged or destroyed by any cause whatsoever.

(d) Seller shall observe and comply with, to the extent required by Purchaser, the wages, hours and working conditions established by Purchaser on the project or required of Purchaser by an applicable labor agreement.

(e) Seller shall act as an independent contractor and not as the agent or representative of Purchaser. All rights and remedies reserved to the Owner under Purchaser's contract with it shall apply to and be possessed by Purchaser as well as by Owner, in all dealings with Seller.

(f) Seller shall perform its work in accordance with the schedules and work programs established by Purchaser; and shall fully cooperate with Purchaser and others engaged in work on the project so that the work on the entire project may be performed with the utmost speed, consistent with good practices. In case of conflict, Purchaser may direct the necessary coordination.

(g) Seller shall carry on its work so that the premises shall at all times be clean, orderly and free from debris and upon completion shall remove all equipment and unused materials from the project, clean up all refuse and debris, and leave the site of the work clean, orderly and in good condition.