

TERMS AND CONDITIONS (for Framing Systems, Inc. Vendors)

- 1. ACCEPTANCE.** This Purchase Order is Framing Systems, Inc. "Buyer" offer to purchase the goods according to the terms and conditions specified therein. When signed by "Vendor", this Purchase Order establishes a binding contract. The Purchase Order together with the Contract Documents listed on the face of this Purchase Order sets forth the entire agreement between parties and supersedes any prior negotiations and understandings between them respecting the subject matter of this Purchase Order.
- 2. DEFINITIONS.** "Vendor" shall mean the person or entity to whom a Purchase Order is issued. "Lower Tier Persons" shall mean contractors, subcontractors, laborers, and material suppliers providing goods or services to Vendor which are part of this Purchase Order. "Framing Systems, Inc." shall mean "Buyer" the "Work" shall mean the provision of all necessary services, labor, materials, and equipment for the complete assembly and delivery. The "Materials" are described on the face of this Purchase Order. Other capitalized terms are as shown on the face of this Purchase Order.
- 3. PURCHASE PRICE AND PAYMENT TERMS.** The Purchase Price listed on the face of this Purchase Order shall be the complete sum payable to Vendor for the Materials and the Work inclusive of delivery, assembly, shop drawings, samples, labor costs and burdens, storage, freight, taxes (including without limitation sales and use taxes), insurance, permits, government fees and imposts, and Vendors overheads and profit. All invoices, applications for payment and delivery tickets shall refer to the Purchase Order number. Subject to adjustment by amount necessary to resolve disputes, liens or claims involving Vendor's Work or Materials, progress payments for materials delivered and/or Work actually performed, less applicable retainage, shall be made to Vendor no later than ten (10) days after payment has been made by Owner to Framing Systems, provided and to the extent that such payment by Owner specifically includes compensation for Vendor's Materials and/or Work. Final payment shall not be made until Vendor has submitted all applicable warranties, manuals, operation instructions and as-built drawings, and all punch list items related to this Purchase Order have been completed. No finance charges shall be billed to or paid by Framing Systems. Payment to Vendor shall not constitute acceptance or waiver if any defective or non-conforming Materials or Work (whether known or unknown) or any other claim against Vendor whether or not under this Purchase Order. All or part of any payment then due may be withheld to the extent necessary to satisfy any lien or claim of Vendor or any Lower Tier Person, or to indemnify Framing Systems against any claim in, loss or liability (including attorney fees) attributed to Vendor or a Lower Tier Person. All shipments shall be F.O.B. Jobsite. Any separate freight costs agreed to by Framing Systems must be separately itemized on Vendor's invoice or application for payment.
- 4. CONTRACT DOCUMENTS.** Vendor hereby represents and warrants that it is familiar with the scope of the Project, the site conditions and other documents relating to the purpose of Materials and/or Services, it has carefully examined the plans, drawings, specifications, principal contract, general and supplementary conditions, and other documents related to the Project. Vendor warrants and guarantees the Materials are new, merchantable and fit for their intended use, free of defects and in compliance with the Contract Documents.
- 5. TIME.** Time is of the essence of this Purchase Order. Vendor shall commence fulfillment of this order immediately and shall supply the Materials and/or Services and complete the Work in a timely manner coordinated with other work on the Project. Vendor represents that it has been advised of the anticipated completion date of the Project and agrees to perform the Work by no later than the Required Delivery Date listed on the face of this Purchase Order so as not to delay the Project. Upon request, Vendor shall expedite the performance of the Work and delivery of the Materials for the overall benefit of the Project. Vendor shall be liable for and indemnify Framing Systems against all costs, damages, liabilities, expense, penalties or liquidated damages resulting from the Vendor's delay in the delivery of the Materials and the performance of the Work, including the delivery of shop drawings and samples. In the event Vendor fails to timely perform its obligations hereunder, Framing Systems shall have the right to terminate this Purchase Order, secure alternate performance, and charge the vendor the expenses of such alternate performance (including additional charge of 10% for overhead and profit of Framing Systems).
- 6. INDEMNIFICATION.** To the fullest extent permitted by law, Vendor agrees to indemnify and hold Framing Systems harmless from and against any loss, damage, cost, expense, liability, claim (including attorney fees and defense costs) in whole or in part arising out of or relating to (a) the action or inaction of Vendor or any Lower Tier Person, (b) Vendor's failure to comply with the terms of this Purchase Order or the Contract Documents, or (c) the inaccuracy of any warranty or representation of Vendor.
- 7. LIMITATION ON LIABILITY.** No claim by Vendor against Framing Systems shall be asserted or enforced in an amount that exceeds the amount actually recovered by Framing Systems from Owner or other third party. The submission or assertion by Framing Systems of a claim to or against the Owner on behalf of Vendor shall not constitute an admission of the validity of such claim or constitute and estoppels or waiver of any defense thereto. No limitation on liability shall be asserted against Framing Systems by Vendor nor shall any such limitation contained in any of Vendor's or Lower Tier Persons documentation become binding upon Framing Systems unless separately and expressly agreed to in writing by Framing Systems.
- 8. INTELLECTUAL PROPERTY.** Vendor represents and warrants that all materials, equipment and processes furnished or utilized in filling this order will not infringe on any U.S. or foreign patent, copyright or trademark.
- 9. INSURANCE.** Vendor shall procure and maintain, at its sole expense, insurance (naming Framing Systems as an additional insured) in such amounts and for such coverages as required by the Contract Documents or as follows, whichever is higher: Commercial General Liability - \$1,000,000 each occurrence and per project aggregate (including products/completed operation and personal injury); Business Auto - \$500,000 Combined Single Limit; Statutory Workers Compensation coverage; Umbrella/Excess Liability : \$1,000,000. Vendor shall provide evidence of insurance to Framing Systems in form satisfactory to Framing Systems (including; without limitation, ACORD Form 27). Vendor hereby waives any claim it may have against any person for personal injury or for damage or destruction of any of its property to the extent such claims are recoverable under the required policies of insurance whether or not Vendor actually carries such policy.
- 10. LIEN WAIVERS.** Vendor shall provide the Materials and complete the Work free and clear of all liens and encumbrances whatsoever including without limitation, mechanics liens of Vendor and any Lower Tier Vendor. Upon payment to Vendor and at any other time reasonably requested by Framing Systems, Vendor shall deliver a waiver of lien duly executed by Vendor with similar lien waiver executed by all Lower Tier Persons, if any, who could claim a lien in connection with the Work and Materials. If any lien or claim of lien against any interest regarding materials or services supplied by Vendor or any Lower Tier Person, Vendor shall cause such lien to be released (whether by payment, bond or otherwise within seven (7) days after notice from Framing Systems. Vendor shall indemnify and hold Framing Systems harmless from any loss, damage, cost, expense, liability, claim (including attorney fees and defense costs) in whole or in part arising out of or relating to liens or claims of lien for the Work or Materials.
- 11. DEFAULT BY VENDOR.** If (a) the Work to be performed or Materials to be supplied by Vendor shall be late, defective, or not in conformance with the Contract Documents, or (b) Vendor shall fail to perform the Work or supply the Materials (including without limitation, the unauthorized suspension thereof) or cause any interference with the work of Framing Systems, then Framing Systems may (but shall not be required to) directly or indirectly perform the Work or procure alternate Materials (deducting the cost from any amount due to Vendor and charging to Vendor any excess of such cost and expense from the amounts, if any, due to Vendor), terminate this Purchase Order, or pursue any other remedy available at law or equity.
- 12. TERMINATION.** Framing Systems shall be further entitled to terminate this Purchase Order if (a) its principal contract with Owner is Terminated, (b) the Owner does not approve of Vendor or the Materials, (c) Vendor breaches any warranty, representation or guarantee under this Purchase Order, (d) Vendor becomes insolvent or subject to any bankruptcy, insolvency, or receivership proceedings, (e) Vendor fails to deliver the Materials by the required Delivery Date, or (f) Vendor commits other material breach of this Purchase Order or the Contract Documents.
- 13. WARRANTIES.** In addition to other warranties and representations contained herein, Vendor warrants all Materials and Work to be free from defect and to conform to all product samples, shop drawings, other drawings, specifications, and Contract Documents for a period of one (1) year from substantial completion of the project. This warranty shall survive and shall not be affected by inspection, acceptance or payment by Framing Systems for Material and Work rejected (whether before or after installations or completion) and shall be returned and replaced (if replacement is requested by Framing Systems) at Vendors expense. All warranties shall run in favor of Framing Systems. THERE SHALL BE NO WAIVER OF ANY IMPLIED WARRANTIES.
- 14. MODIFICATIONS.** There shall be no modification of this Purchase Order and no compensable extra work shall be authorized except by written change order signed by a corporate officer of Framing Systems or the Framing Systems Project Manager identified on the face of this Purchase Order. The terms of this Purchase Order shall control over any conflicting, added or omitted terms in Vendor's proposal, acceptance, or invoices. Upon request of Framing Systems, Vendor shall promptly provide pricing information in such detail, including any impact costs, as may be required to calculate and prepare authorized change orders. This Purchase Order constitutes the entire understanding between the parties and no other promise or representation shall be binding upon Framing Systems unless expressly set forth herein.

15. **COMPLIANCE WITH LAWS.** To the extent relevant to this Purchase Order, Vendor's performance shall comply in all respects with all federal, state, and municipal laws, regulations, ordinances, and bylaws relating thereto including, without limitation and when applicable, (1) all applicable U.S. Government procurement regulations, including the Federal Acquisition Regulations (FAR), (2) any state or local public procurement law or regulation, (3) any mandatory term included, referenced, or required to be included by law or regulation in any instructions, specifications or drawings included as part of this Purchase Order.
16. **FLOW DOWN.** Vendor shall include the terms and conditions of this Purchase Order in any of its agreements with Lower Tier Persons.
17. **MISCELLANEOUS.** Notices to Framing Systems shall be in writing and directed to the Framing Systems Project Manager at the address on the face of this Purchase Order. The parties shall promptly advise the other of any address change. Notices shall be either hand-delivered or delivered by certified mail or email (with confirmation of delivery). No failure of Framing Systems to enforce any term of this Purchase Order or any obligation of Vendor shall be deemed a waiver of the right of Framing Systems to enforce the same or any other term or obligation in the future. The unenforceability of any term or provision of this Purchase Order shall not affect the enforceability of any other term or provision. This Purchase Order shall be governed by the laws of the State of Ohio. The Common Pleas of Cuyahoga County, Ohio shall have the exclusive jurisdiction and venue over any litigation involving Framing Systems and Vendor with respect of this Purchase Order.