

**HMW CONTRACTING LLC**  
**GENERAL TERMS AND CONDITIONS – PURCHASED GOODS**

Except as otherwise expressly set forth in the Purchase Order (as defined below), the parties agree that the following General Terms and Conditions of Purchase (“Terms and Conditions”) shall govern the transaction contemplated under the Purchase Order:

**1. Contract.**

1.1. Contract Formation. Each purchase order or other type of written instruction(s) that HMW Contracting LLC, a Michigan limited liability company (“Company”), issues (“Purchase Order”) is Company’s offer to purchase the products identified in the Purchase Order (“Products”) from the entity identified therein (“Supplier”). The Purchase Order can be accepted only upon the terms and conditions expressed herein, which may not be modified, amended or waived except by express written consent executed by a duly authorized representative of Company (“Authorized Representative”). Supplier will be deemed to have accepted the Purchase Order as issued and all of the provisions of these Terms and Conditions (A) if Supplier begins performance under the Purchase Order, or (B) if Supplier acknowledges in writing its acceptance of the Purchase Order. Company may withdraw the Purchase Order at any time before it is accepted by Supplier. Upon acceptance, the Purchase Order, these Terms and Conditions, and any other documents specifically incorporated in the Purchase Order, including, without limitation, any Prime Contract (as defined below), specifications, drawings, or quality requirements, constitute a binding contract between Company and Supplier (the “Contract”). The Contract will constitute the entire agreement between the parties regarding the subject matter thereof and will replace any other agreements or understandings between the parties. If Supplier objects to the Purchase Order or proposes alternate or additional terms but commences or has commenced performance under the Purchase Order before Company expressly agreed to such alternate or additional terms in writing, the Purchase Order will still become the Contract as provided above but will not include the alternate or additional terms. The Purchase Order may incorporate one or more agreements between (i) Company and a third party (the “Owner”) or (ii) two Owners by reference (each such agreement with Owner(s), a “Prime Contract”). If the Purchase Order does incorporate a Prime Contract by reference, the Prime Contract shall be part of the Contract, Supplier shall assume toward the Owner and Company all obligations and responsibilities that Company, under the Prime Contract, assumes toward the Owner and its affiliates (architects, engineers, consultants, etc.), and Company shall have the benefit of all rights, remedies, and redress against Supplier that the Owner, under the Prime Contract, has against Company. All applicable Prime Contracts will be available for inspection upon Supplier’s written request.

1.2. Term. The term of the Contract shall begin on the date set forth on the respective Purchase Order and shall end either on the date set forth on the Purchase Order, or, if no end date is set forth, when Supplier and Company complete all of their respective obligations under the Contract.

1.3. Conflicting Provisions. In the event of a conflict between the Terms and Conditions, any other drawings or specifications specifically incorporated in the Purchase Order and the Purchase Order, the Purchase Order shall prevail first, then the drawings, then the specifications, and then these Terms and Conditions.

1.4. Changes. Company may from time to time by notice to Supplier make changes to the drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or similar requirements provided under the Contract. Any difference in price or time for performance resulting from such changes shall be equitably adjusted, and the Purchase Order shall be modified in writing accordingly. Contract changes must be evidenced by a writing signed by Company’s Authorized Representative. Supplier shall not make any changes in the design or composition of any

Products to be provided hereunder without the prior written approval of Company. Without limiting the generality of the foregoing, the price(s) established in the Contract are “firm” and not subject to increase for any reason without the prior written consent of Company.

1.5. Competitive Prices or Terms. If, at any time prior to payment by Company for all Products purchased hereunder, Supplier (A) sells, or offers to, sell substantially similar products under similar circumstances to another customer at a lower price, (B) offers a reduction in price to any customer already purchasing substantially similar products, or (C) sells, or offers to sell, substantially similar products on commercial terms that are more favorable than those set forth in the Contract, Supplier shall promptly notify Company thereof and such lower price or more favorable terms will be applicable to all purchases of Products by Company hereunder.

1.6. Missing Terms. If quantities or delivery schedules are not specified in the Purchase Order, they will be as agreed from time to time by Company and Supplier in writing.

1.7. Right to Inspect and Risk of Loss. From time to time upon Company’s request, Supplier agrees to provide Company with reasonable access to Supplier’s books and records related to price, quantity, and other terms of various contracts of Supplier. Company may, at any time, inspect all Products during their manufacture, construction or preparation. All Products shall be received subject to Company’s inspection and rejection. Any Product that is rejected by Company as a result of a defect or nonconformance with the terms hereof or any of Supplier’s warranties shall be subject to Section 4.3 hereof. Title and risk of loss with respect to the Products shall remain with Supplier until the Products have been delivered to and accepted by Company in accordance with the terms hereof.

2. Contract Performance. Supplier acknowledges that time is of the essence with respect to Supplier’s obligations under the Contract, and Supplier’s prompt and timely performance of all such obligations is strictly required. Supplier shall exercise due diligence to start and complete all work in accordance with Company’s schedule and shall carefully provide all Products under the Contract in a first class and workmanlike manner. In the event of Supplier’s failure to perform or delay in performance under the Contract, Purchaser may, in its discretion, in addition to other rights and remedies provided hereunder and by applicable law, terminate the Purchase Order upon notice to Supplier. Upon such termination, Supplier shall, in addition to other damages Company may be entitled to under applicable law, be liable to Purchaser for any costs incurred by Purchaser in connection with such termination. Supplier must furnish all labor, supervision, machinery, materials, equipment, and supplies necessary to timely complete the Contract. Unless otherwise specifically set forth in the Purchase Order, Supplier shall obtain all permits and licenses necessary to commence and complete the Contract. Supplier must also comply with all governmental laws, ordinances, rules, and regulations, relative to the Products and the preservation of the public health and safety. Supplier shall conform all equipment, material, and operations to limits indicated by law, ordinances, or permits. If any drawings, specifications, or other documents under the Contract conflict with any laws, ordinances, rules, or regulations, Supplier shall promptly notify Company in writing so that any necessary changes in the Products may be made. Supplier shall be responsible for any damage to Products prior to Company’s acceptance.

3. Subcontracts. Supplier shall not assign, delegate, or sub-contract any portion of the Contract to another entity or individual without the prior written permission of Company. Such written permission, if provided by Company, shall not relieve Supplier from responsibility for the entire Contract and for the conduct of all such sub-suppliers. Supplier, in assigning, delegating, or sub-contracting any part of the Contract, shall bind each such sub-supplier by an appropriate contract consistent with the terms, obligations, and conditions of the Contract, without in any way creating any contractual relations between such sub-supplier and Company. Supplier shall properly direct, control, and coordinate the work of all sub-suppliers.

#### **4. Delivery and Schedule.**

4.1 Packaging and Delivery. Company may specify the method of transportation and the type and number of packing slips and other documents to be provided with each shipment. Supplier will pack and ship Products in accordance with Company's instructions, including labeling and hazardous materials instructions. If Company has not provided packing or shipping instructions, Supplier will pack and ship Products in accordance with sound commercial practices. Unless otherwise stated in the Contract, Products will be delivered DDP Company's facility, Incoterms 2010®, and title to the Products will transfer to the Company upon delivery and acceptance by Company in accordance with the terms hereof.

4.2 Schedule. Time is of the essence under the Contract. Supplier will deliver Products in strict accordance with the Contract terms. If Products are not ready for delivery in time to meet Company's delivery schedules, Supplier will be responsible for any additional costs. Supplier must ensure it has adequate labor available to meet all scheduling demands set forth in the Contract. In the event the Purchase Order is a blanket order, Supplier will only commence work on the Products as set forth in the Purchase Order or in subsequent firm releases. Company may periodically review lead-time situations and adjust or confirm its delivery demands. In the event Company requests Supplier to hold the Products beyond the scheduled delivery date, no additional charges may be made for warehousing, trucking, or other expenses incident to such delay.

4.3 Non-Conforming Products. Without limiting any remedies available to Company at law or under the Contract, Company's remedies for Products that do not conform to the Contract will be to (A) reject the non-conforming Products and, in the event of non-conforming Products, return the non-conforming Products to Supplier at Supplier's sole expense or (B) require Supplier, at Supplier's sole expense, to either repair or replace the non-conforming Products. Any replacement Products shall be delivered DDP Company's facility, Incoterms 2010®. In the event Company is required to purchase similar products from a third party due to Supplier's failure to meet the Contract requirements, Company shall be entitled to set-off the costs it incurs in obtaining such alternative products against amounts otherwise owed to Supplier. Notwithstanding anything contained in the Contract to the contrary, Company is not required to inspect Products delivered and no inspection or failure to inspect will reduce or alter Supplier's obligations under the Contract.

**5. Insurance.** Supplier shall, at its sole cost and expense and at all times during the course of performance under the Contract, and for a period of 12 months following the termination or expiration of the Contract, maintain, in form and substance satisfactory to Company:

5.1. all such worker's compensation or similar insurance as may be required under the laws of any state or jurisdiction where the Products are to be furnished, manufactured, constructed or prepared under the Contract; and

5.2. comprehensive general liability insurance, including products-completed operations, blanket contractual liability, automobile liability and such other policies as are customary in the case of companies engaged in businesses similar to Supplier, in each case naming Company as an additional insured and with a limit of the greater of: (a) an amount at least equal to the amount required by the Owner for each occurrence and in the aggregate, and (b) at least \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.

Upon Company's request, Supplier shall furnish to Company (i) evidence of the maintenance of all such insurance, and (ii) additional insured endorsements in form and substance satisfactory to Company, naming Company as an additional insured under the policies.

**6. Payment.** Prices shown on the Purchase Order shall apply to all Products provided by Supplier. Such prices cover all applicable federal, state, local and municipal taxes and all charges for freight and insurance to deliver the Products to Company. Unless otherwise specified in writing by Company, Supplier shall be responsible for any tax, import or export duty or fee imposed by any federal, state, local or municipal authority arising out of the sale, manufacture, shipment or installation of the Products under the Contract. If any price is omitted from the Purchase Order, the price for such Products will be the lowest price at which goods or services the same as or substantially similar to such Products are currently offered by Supplier to a similar customer, under similar circumstances and in similar quantities. Unless otherwise specified in the Purchase Order, all payments shall be on a net thirty (30) day basis, and Company may, in its discretion, retain up to ten percent (10%) of any payment under the Purchase Order until the completion of performance under the Contract. In the event of such retention, Company shall remit the retained sums, less any sums deducted from the total in accordance with the provisions of the Contract, to Supplier upon completion of performance under the Contract. Notwithstanding anything to the contrary contained in the Contract, to the extent the Purchase Order relates to any Products of any kind for use at an Owner's site or for an Owner's project, Supplier shall be paid only to the extent that Company has been paid by Owner.

**7. Warranty.** In addition to all warranties implied in fact or in law, Supplier expressly warrants, upon acceptance of the Purchase Order, that the Products will fully comply with the specifications, drawings, descriptions or samples furnished or specified by Company and that the same will be merchantable, fit for the purpose intended and of first quality, involve no unreasonable risk or injury or damage when used as intended, conform to all applicable specifications and samples and be free from all defects in design, materials and workmanship. Company's review or approval of any samples, specifications or other data developed by Supplier in connection with the Contract will not limit Supplier's responsibility under the warranties contained herein. Supplier further acknowledges that Supplier knows of Company's intended use of the Products. In addition to the foregoing, Supplier hereby agrees to assign to Company any and all warranties available to Supplier on any component supplies or services not manufactured or performed by Supplier. All warranties hereunder will survive Company's acceptance, use, and payment and will expressly be for the benefit of Company and its customers. Company may accept or reject any or all Products that are in breach of this Section and, in any event, hold Supplier liable for all damages caused, directly or indirectly, from such breach of this Section.

**8. Safety.** Supplier shall, in connection with its performance under the Contract, implement and follow an industry standard safety program and otherwise comply with all applicable workplace safety rules and regulations. Supplier shall observe all safety and security rules, instructions and requests of Company and/or the Owner, as the case may be, whenever Supplier's performance hereunder causes Supplier to enter upon Company's or such Owner's location. If Products provided or to be provided under the Contract involve or may involve any risk of injury or death to persons or damage to property, Supplier shall provide Company with a written description of the nature and extent of any such risk, including a description of any precautions which should be taken to minimize the risk of death, injury or damage occurring and to minimize the injury, damage or loss in the event of any such occurrence.

**9. Cancellation.** Company may cancel the Purchase Order if Supplier fails to perform or observe any material term or condition hereof, or for no reason at all, by giving Seller ten (10) days written notice of cancellation. Upon such notice, Supplier will immediately cease all performance hereunder. If Company cancels the Purchase Order for Seller's failure to perform or observe any material term or condition hereof, Supplier will be liable to Company for any and all damages, including

reasonable attorneys' fees and other expenses, resulting therefrom, and Company will be entitled to retain any payments that Supplier may have been entitled to as compensation for Company's damages. Cancellation shall not prevent Company from utilizing any other remedy available by law or from seeking such damages to which it may be entitled under law.

**10. Company's Property.** Any materials furnished by Company, other than on a charge basis, with respect to any Product, shall be deemed held by Supplier upon consignment. All such materials not required for use in the manufacture of the Products hereunder shall, as directed by Company, be returned to Company at Company's expense, and if not accounted for or so returned, shall be paid for by Supplier.

**11. Confidentiality.**

11.1. All non-public, confidential or proprietary information of Company, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "Confidential Information"), disclosed or made available by Company to Supplier, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision of the Products and the Contract is confidential, and shall not be disclosed or copied by Supplier without the prior written consent of Company. Confidential Information does not include information that is (A) in the public domain; (B) known to Supplier at the time of disclosure; or (C) rightfully obtained by Supplier on a non-confidential basis from a third party.

11.2. Supplier shall use the Confidential Information only for the purpose of providing Products under the Contract.

11.3. Company shall be entitled to injunctive relief for any violation of this Section.

**12. Indemnification.** Supplier will indemnify and defend Company, its agents and employees against third-party claims, liens, or demands for injury or death to persons, property damage, economic loss, and any resulting damages, losses, costs, and expenses (including reasonable legal fees), regardless of whether the claim or demand arises under tort, contract, strict liability, or other legal theories, if and to the extent caused by Supplier's defective design, manufacture, supervision, delivery, or installation of Products, delivery of non-conforming Products, breach of Supplier's warranties, express or implied, and any products liability claims relating to the Products provided hereunder, its employees' or representatives' acts or omissions in its performance under the Contract, its infringement of any intellectual property rights, or its failure to timely pay any third-parties.

**13. Set-Off.** In addition to any right of set-off provided by law, all amounts due to Supplier under the Contract shall be considered net of indebtedness of Supplier to Company, and Buyer may deduct any such indebtedness due or to become due from Supplier to Buyer from such amounts due to Supplier pursuant to the Contract or any other contract between Company and Supplier.

**14. Force Majeure.** A delay or failure by either party to perform its obligations under the Contract will be excused, and will not constitute a default, only if (A) caused by an event or occurrence beyond the reasonable control of that party and without its fault or negligence, including a labor dispute, and (B) the party unable to perform gives notice of the non-performance (including its anticipated duration) to the other party promptly after becoming aware that it has occurred or is reasonably likely to occur, followed by prompt notices of any material changes in the facts relative to its ability to perform and/or the anticipated duration of the non-performance. Supplier and Company shall share information,

confer, seek agreement and otherwise act cooperatively to avoid or mitigate the effects of the potential or actual excused non-performance. If Supplier is unable to perform for any reason, Company may purchase Products from other sources and reduce its purchases from Supplier accordingly without liability to Supplier. Within three (3) business days after written request by the other party, the non-performing party will provide adequate assurances that the non-performance will not exceed thirty (30) days. If the non-performing party does not provide those assurances, or if the non-performance exceeds thirty (30) days, the other party may terminate the Contract by notice given to the non-performing party before performance resumes.

**15. Governing Law and Dispute Resolution.**

15.1 Supplier agrees and warrants that it does not discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position.

15.2 Supplier agrees and warrants that its name does not name appear in the current register of employers failing to correct an unfair labor practice compiled under Michigan Compiled Law 423.322, as compiled by The United States Labor Relations Board.

15.3 The Contract shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to the conflict of laws principles thereof. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Contract. Any lawsuit arising directly or indirectly out of the Contract will be litigated in the Circuit Court for Wayne County, Michigan, or, if original jurisdiction can be established, in the United States District Court for the Eastern District of Michigan. Supplier acknowledges and agrees that, in the event of any breach of the Contract, Company may be irreparably and immediately harmed and that money damages alone may not be a sufficient remedy for such breach. Accordingly, it is agreed that, in addition to any other remedy to which Company may be entitled at law, in equity or otherwise, Company shall be entitled to seek injunctive or other equitable relief (without the posting of any bond) to prevent any actual or threatened breach of the Contract and to compel specific performance of the Contract, and that Supplier will not oppose the granting of such relief.

15.4 If any term or provision of the Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Contract or invalidate or render unenforceable such term or provision in any other jurisdiction.

15.5 The Contract may only be amended or modified in a writing that specifically states that it amends the Contract and is signed by an authorized representative of each party.

15.6 Provisions of these Terms and Conditions, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of the Contract including, but not limited to, Section 1.7, Section 5, Section 7, Section 10, Section 11, Section 12, Section 13, and Section 15 of these Terms and Conditions.

[END OF TERMS AND CONDITIONS]