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**CONTRACT PURCHASE ORDER**

**Number**

**Job No Improvements**

Date:

To:

Jobsite:

Required By:

Ship Via:

Ship To: Jobsite

Delivery Point:

Terms:

Material  
Shipping  
CA Sales Tax

(Phase Code: )

**Total:**

VENDOR

C. OVERAA & CO.

BUYER

By:

signature

By:

signature

Contractor's License No. 106793

**By signing above, Vendor agrees to the terms and conditions of this purchase order.  
Return signed purchase order within 7 days. Fully executed copy will be returned for your files.**

**COMPLETE AGREEMENT**

This order, including the terms and conditions, contains the complete and final agreement between C. Overaa & Co. ("Buyer") and Seller, and supersedes any prior proposals, quotes, discussions, correspondence or prior dealings with Buyer and Seller. Commencing performance or making deliveries or acknowledgment of the Agreement shall constitute an acceptance of this Agreement by Seller.

**CHANGES AND RIGHT TO TERMINATE**

Buyer may make any change, including, without limitations, additions or deductions in quantities, specification or drawing change, delivery change, suspension or termination. In the event of any change or termination, Buyer shall equitably adjust the price by negotiation with Seller. Such adjustment will take into account unavoidable costs incurred by Seller as a result of the change or termination, including, without limitation, the costs of materials that cannot be returned or re-used, the cost of returning materials, costs incurred in manufacture, plus a reasonable mark-up on those costs for overhead and profit. In the event parties cannot agree to a price adjustment, the adjustment shall be determined pursuant to the disputes provision of this Agreement. Seller must submit to Buyer the information necessary to evaluate Seller's claim for a price adjustment within ten days of notice to the Seller of the change or termination.

If the Owner orders Buyer to change, terminate, or suspend the work included in this Agreement, Seller shall comply with Owner's order and the price shall be adjusted only as allowed for by Owner. Buyer agrees to present Seller's reasonable claim to Owner and to prosecute it according to the terms of the Prime Contract, provided Seller provides Buyer with sufficient information so that Buyer can comply with the claims and dispute resolution procedures of the Prime Contract. Seller agrees to cooperate in and be bound by the terminations and dispute resolution provisions of the Prime Contract. If, in the course of those dispute resolution procedures, Buyer incurs costs, such as attorneys' fees or expert witness fees, Seller agrees to reimburse Buyer for Seller's equitable share.

Changes will be binding on Buyer only if in writing and signed by Buyer. Nothing provided in this change provision shall excuse the seller from performing diligently this Agreement as changed.

**PROJECT PLANS AND SPECIFICATIONS**

Seller expressly warrants that all items and work covered by this Agreement will be in strict compliance with the Plans and Specifications. The Project Plans and Specifications are hereby fully incorporated into this Agreement. Seller agrees to be bound by any and all of these documents and to be bound to Buyer to the same extent as Buyer is bound to the Owner relative to the work provided for in this agreement. Electronic copies of the Plans and Specifications are available on request.

**SUBMITTAL DATA**

Seller shall submit to Buyer complete, responsive submittal packages consisting of, but not limited to, as required by the specifications or by the Owner, shop drawings, design calculations, samples, material data, spare parts list, performance data, and other appurtenant literature for Owner's approval, no later than two (2) weeks after receipt of this order. If resubmittals are required, Seller must resubmit all required information to Buyer within one (1) week after Seller's receipt of resubmittal requirements. Seller's delivery time will be reduced an amount of time equal to any avoidable delays in receipt of submittals or resubmittals. Seller shall specifically state any discrepancies or deviations from the Plans and Specifications in a cover letter to the submittal package; otherwise, it will be assumed there are no such discrepancies. Seller shall furnish Operations and Maintenance Manuals with as-built drawings in accordance with the Project Specifications. These manuals must be submitted prior to shipment of all items.

**SPARE PARTS AND SPECIAL TOOLS**

Seller is to provide spare parts and/or special tools as required by Owner or recommended by Seller at no additional cost to Buyer prior to installation of items covered by this order. Spare parts and special tools must be packaged in a separate box clearly marked with contents.

**DELIVERY**

Time is of the essence in this Agreement. The Seller shall conform to the date(s) specified on the face of this order. All deliveries are to be DAT jobsite. Should delivery fail to be timely, Seller shall be liable for all damages suffered by buyer as a result of such failure, including without limitation, any liquidated damages imposed upon Buyer under Buyer's prime contract. Seller shall not be liable for unavoidable delays in shipment caused by, but not limited to, acts of God, acts of Buyer, acts of public utilities, fire, flood, epidemics, strikes (other than against Seller), or unusually severe weather, provided the Seller notifies Buyer in writing of any unavoidable delay, and provides such notice within a time frame enabling Buyer to present a timely claim for delay to Owner.

**PAYMENT**

Seller's invoice shall set forth the acceptable items delivered to the jobsite, the date of delivery, and the itemized cost of the items delivered. The obligation of Buyer to make any payment hereunder is subject to the condition precedent of payment by Owner to Buyer for materials covered by this Purchase Order. In the event Owner does not make payment for reasons not arising out of Buyer's culpable acts, Seller agrees its sole remedy shall be against the Owner. Buyer agrees to present Seller's reasonable claim to Owner and to prosecute it according to the terms of the Prime Contract, provided Seller provides Buyer with sufficient information so that Buyer can comply with the claims and dispute resolution procedures of the Prime Contract. Seller agrees to cooperate in and be bound by the terminations and dispute resolution provisions of the Prime Contract. If, in the course of those dispute resolution procedures, Buyer incurs costs, such as attorneys' fees or expert witness fees, Seller agrees to reimburse Buyer for Seller's equitable share.

Payment schedule for acceptable delivered items shall be as follows: 90% within 30 days of jobsite delivery date; 10% within 35 days of start-up, testing, and Owner's acceptance. No more than 75% of the order amount will be paid by Buyer, until the required Operation and Maintenance Manuals, spare parts lists, and special tools are received.

**WARRANTY**

Seller warrants to Buyer that it has fully and carefully reviewed the provisions, specifications, drawings, samples, or other descriptions contained in this Agreement and in the project Plans and Specifications. Seller warrants to Buyer that all materials shall be free from all defects, shall be of the quality specified, shall be fit and appropriate for the purpose specified, and shall conform to the provisions, specifications, performance standards, drawings, samples, and other descriptions contained herein or in the project Plans and Specifications. Seller further warrants that the materials will be complete in all respects necessary to make the materials fully functional if installed in accordance with the Plans and Specifications and Seller's recommendations. Seller guarantees to Buyer that the materials rendered shall be free of any and all defects in workmanship and materials and that equipment provided shall operate as specified, for the longer of one year from date of initial operation or as required in the project Plans and Specifications. During the guarantee period, Seller agrees to remedy all defects by adjustment, repair, or replacement within ten (10) days of notification at no cost to Buyer. Seller shall assume all responsibility and expense for removal, freight, and reinstallation in connection with the foregoing remedies. If seller has failed to take corrective action within the ten (10) days allowed, Buyer may, at its sole discretion, perform warranty repair work at Seller's expense. Seller shall have no obligation to repair under warranty any items which have not been operated or maintained in accordance with the Seller's operation and maintenance manuals. In no event shall Seller's obligations hereunder expire prior to any guarantee or warranty period(s) imposed on Buyer.

**DEFAULTS**

If Seller fails to perform any of its obligations hereunder, Buyer, at its option and in addition to and without prejudice to any other rights afforded herein or by law, after giving Seller two (2) working days' notice in writing and if not cured during such notice period (or, if the cure will take longer than two (2) days, if not begun during such notice period and prosecuted diligently) and without further notice to Seller, shall have the right: a) to provide any such labor and materials as may be necessary and deduct the cost thereof including, without limitation, Buyer's profit and overhead from any money then due or thereafter to become due to the Seller under this Agreement or b) to terminate Seller's right to proceed with the work and employ others to finish the work and provide materials. If Seller's right to proceed with the work is terminated, Seller shall not be entitled to receive any further payment under this Agreement until all the work undertaken by Buyer is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Buyer in finishing Seller's work, the excess shall be paid by Buyer, but, if the expenses shall exceed the unpaid balance, then Seller shall promptly pay the amount by which the expenses exceed the unpaid balance. The expenses referred to in the last sentence shall include expenses incurred by Buyer for furnishing materials, for finishing the work, plus a markup of twenty-five percent (25%) overhead and profit, and for any other damages sustained by Buyer by reason of Seller's default. In the event of an emergency affecting the safety of persons or property, no notice shall be required.

**PATENTS**

Seller undertakes and agrees to defend, at Seller's sole expense, all suits, actions, or proceedings in which Buyer, its successors or assigns or the Owner under the prime contract are made defendants for actual or alleged infringement of any U.S. or foreign letters patent resulting from the use or sale of the items purchased hereunder, and further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action, or proceedings against such defendants therein.

**APPLICABLE LAWS**

The definitions of terms used, interpretation of this Agreement, and the rights of all parties hereunder, shall be construed under and governed by the applicable federal, state, and local laws, ordinances and regulations of the location of the job site. Whenever Buyer is not the ultimate consumer of the materials, all rights, benefits, and remedies conferred upon Buyer hereunder shall accrue and be available to and are for the express benefit of any successors and interest to the materials, including the ultimate consumer of the items covered by this Agreement.

**MSDS**

California State Law requires manufacturers and suppliers of materials which contain one or more hazardous substances, as determined by CAL/OSHA or any state, federal law, provision, or regulation to furnish Buyer a material safety data sheet (MSDS) on Form OSHA20.

**INDEMNITY AND INSURANCE**

Seller shall indemnify and hold harmless Buyer against all damages, injuries, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in goods or performance of any services purchased hereunder, or any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligation of Seller. If a third party claim arises solely from an alleged act or omission of Seller or Seller's materials or equipment, then Seller shall defend Buyer. If only part of a third party claim arises from Seller's alleged acts or omissions or Seller's materials or goods, then Seller agrees to cooperate with Buyer in the defense of the claim, to participate in the dispute resolution process, and to reimburse Buyer for Seller's equitable share of the expenses of such defense.

Seller shall, at a minimum, obtain and maintain general liability, automobile liability and workers' compensation/ employer's liability coverage with minimum limits of \$1,000,000, and Buyer shall be additional insured with respect to the general liability and automobile liability coverages and a waiver of subrogation shall apply with respect to the workers' compensation coverage. Seller shall immediately provide evidence of such coverage, including endorsements, upon request of Buyer.

**DISPUTES**

This agreement shall be construed in accordance with the laws of the State of California. If at any time any controversy shall arise solely between Buyer and Seller regarding anything pertaining to this Agreement which the parties hereto do not promptly adjust and determine, or which the Owner's Representative or Architect cannot decide to the satisfaction of both parties, then the dispute shall be resolved by binding arbitration. In the event of a dispute between Buyer and Owner that involves Seller's work, materials or goods, then Buyer may require Seller's participation as a party to the dispute resolution proceeding or Seller may elect to participate as a party, or Seller may elect not to participate as a party but to cooperate fully with Buyer in presenting and defending claims raised by the dispute; but, in any event, Seller agrees to be bound by the outcome of the dispute resolution process between Buyer and Owner, and to accept as full compensation for its claim its prorata share of the judgment, settlement or award.

**BUY AMERICAN ACT**

Shall apply when specified.

**NOTICES**

All notices under this Agreement shall be in writing and shall be effective when delivered to the address given for each party in this Agreement as proved by affidavit of personal delivery, certified mail return receipt, reply email and/or tracking software of a nationally recognized courier company, such as Federal Express or United Parcel Service.

**CERTIFIED PAYROLL**

If required by law or by the Owner, Seller shall provide complete and timely certified payroll information to Buyer via LCP Tracker or such other system as may be specified, required or used by the Owner.