

## UPS INDUSTRIAL SERVICES, LLC. & AFFILIATES – TERMS AND CONDITIONS (MATERIALS/SERVICES)

“Buyer” means UPS Industrial Services, LLC. and Affiliates. “Seller” means the person, firm, or corporation supplying the goods and/or services and includes all parents, affiliates, subsidiaries, sales representatives or other agents, subcontractors, invitees, insurers, their employees or assistants thereof. “Purchase Order” (otherwise “Order”) means the contract between Buyer and Seller and is subject to the contractual obligations of the parties set forth in this agreement.

**1. Contract Formation.** This Purchase Order is an offer to purchase goods and/or services from Seller by Buyer. This Purchase Order does not constitute an acceptance by Buyer of any offer, any quotation, or any proposal from Seller. Buyer shall not be bound by this Purchase Order until Seller executes and returns to Buyer the acknowledgment copy of this Purchase Order which shall constitute acceptance of the offer set forth in this Purchase Order. Seller shall be bound by this Purchase Order when: (1) Seller executes and returns the acknowledgment copy of this Purchase Order; (2) Seller otherwise communicates to Buyer in writing its acceptance of this Purchase Order; or (3) Seller delivers to Buyer any of the goods, or renders to Buyer any of the services, identified in this Purchase Order. This Purchase Order expressly limits acceptance to the Terms and Conditions stated herein, and any additional or different terms proposed by the Seller are rejected unless expressly assented to in writing by Buyer. Buyer expressly objects to any terms contained in any of Seller’s documents which are different from, or additional to, the terms of this Purchase Order.

**2. Entire Agreement.** The parties agree that this Purchase Order, including the Terms and Conditions on the face and reverse side hereof, together with any documents attached hereto or incorporated herein by reference, contain the complete and final contract (the “Contract”) between Buyer and Seller. This Purchase Order supersedes all prior understandings, agreements and negotiations between the Buyer and Seller with respect to the subject matter hereof. Notwithstanding anything to the contrary, if Seller is to have its personnel execute the construction of materials or provide its Services on the Buyer’s Customer/Client Site, then a Contract must be in place or in the sole discretion of the Buyer, Buyer may assign the terms and conditions that shall govern the Scope of Work.

**3. Amendments.** The Contract may not be amended or otherwise modified except by a writing which is executed by the Buyer. Any acknowledgment form or other document of Seller containing Terms and Conditions shall not have the effect of modifying the Terms and Conditions

of this Purchase Order, even if signed by Buyer, and such documents are hereby specifically rejected. Buyer shall consider a request by Seller for an amendment only if such request is in writing and is directed to specific paragraphs in this Purchase Order. No such amendment shall be binding upon Buyer unless specifically accepted in writing by Buyer.

**4. Change Orders.** The Buyer reserves the right to make, at any time, written change orders with respect to any one or more of the following: (1) specifications, drawings, and data incorporated into the Contract; (2) methods of shipment or packing; (3) place of delivery; (4) time of delivery; (5) manner of delivery; and (6) quantities. If any such change order causes an increase or decrease in the cost of, or the time required for, performance of the Contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by Seller for an adjustment under this Paragraph 4 must be approved by the Buyer in writing before the Seller proceeds in accordance with such change order. If Seller proceeds in accordance with the change order without having first obtained Buyer’s written consent to an adjustment, Seller shall be deemed to have waived any claim for an adjustment and Buyer shall not be obligated to make or honor any adjustment relating to the change order in question. Notwithstanding anything to the contrary, Seller shall be required to request and obtain an Increase Purchase Order/Change Order from the Buyer reflecting the increase in price from the original price stated in the Original Purchase Order, if Seller exceeds the original Purchase Order amount. If Seller fails to request and obtain from the Buyer an Increase Purchase Order Change Order reflecting the increase in price in the Scope of work, and Seller proceeds to work past the Original Purchase Order amount then Buyer shall not be liable to Seller for the financial amount by which Seller exceeds the Original Purchase Order.

**5. Price.** (A) Price stated in this Purchase Order shall apply to all deliveries to be made or services to be rendered hereunder. Buyer shall have no obligation to pay invoices for goods or services at any increased price unless such increased price has been consented to in writing by the Buyer. The price set forth in this Purchase Order is for the entire price for the goods and/or services in question. Unless specifically otherwise set forth in this Purchase Order, such price includes all shipping, postage, handling, packaging, containers, drayage and any other materials or services provided in connection with the performance of the Contract by Seller. Except as is otherwise provided in

## UPS INDUSTRIAL SERVICES, LLC. & AFFILIATES – TERMS AND CONDITIONS (MATERIALS/SERVICES)

this Purchase Order, Buyer shall not be obligated to pay any fees or charges whatsoever, including but not limited to surcharges relating to freight, energy, material, or packaging, which are in addition to the purchase price. (B) Except as is otherwise provided in this Purchase Order, the purchase price includes all applicable federal, state and local taxes, including (without limitation) sales taxes. Seller shall be solely responsible for the payment of any such taxes.

**6. Payment.** Unless otherwise agreed in writing, payment shall be made to Seller's designated banking facility Net 60 days from the date of Buyer's receipt of Seller's invoice, which shall contain the Buyer's Purchase Order number AND in the case of goods, delivery and acceptance of the goods; or in the case of services, complete performance of the services. Seller shall provide Buyer an invoice, including final invoice, within sixty (60) days of delivery of goods and services by Seller. Any Seller invoice not received within sixty (60) days of Buyer Acceptance by the Buyer, Buyer shall not be obligated to pay this invoice(s). If any portion of an invoice is disputed, Buyer shall promptly notify Seller in writing of the disputed portion and the reasons therefor and shall pay the undisputed portion in accordance with the applicable terms. If partial delivery of goods or performance of services is made, Buyer shall make a proportional payment therefor. Seller reserves the right to invoice Buyer for any or all goods ready for shipment, when held at Buyer's request or because of other reasons beyond Seller's reasonable control, and Buyer shall pay for such goods as if delivery had been made on the date of such invoice. Seller may assess Buyer reasonable charges for storage of goods for which delivery is delayed, and such storage shall be at Buyer's risk.

**7. Audit.** Buyer's auditors shall have the right to examine records related to this transaction during all reasonable times during normal business hours for a period not to exceed one (1) year from the date of the invoice that is the subject matter of review; however, Seller shall have the right to exclude from such inspection and audit 1) Seller's proprietary data or trade secrets, including but not limited to certain financial documents, 2) items of compensation determined on a fixed basis such as fixed fees or rates, or where such rates are established as negotiated unit prices, 3) the data used to establish negotiated overhead, fee, profit, or other rates similarly derived and usually expressed in percentages, and 4) Seller's processes or software.

**8. Delivery.** (A) Time of delivery and time of performance by the Seller is of the essence. Unless otherwise specified in this Purchase Order, delivery of all goods shall be **F.O.B. Buyer's Headquarters in Deer Park, TX.** Seller shall be responsible for arranging transportation of the goods and insuring of the goods while in transit and prior to acceptance of the goods by Buyer. Seller shall be solely responsible for the cost of such transportation and insurance. If the delivery of the goods is not made at the times specified in this Purchase Order, or the rendering of services is not completed at the times specified in this Purchase Order, Buyer reserves the right, without liability, and in addition to its other rights and remedies, to take either or both of the following actions: (1) direct expedited routings of the goods (the difference in cost between the expedited routing and the Purchase Order routing shall be paid by Seller); and/or (2) terminate the Contract as provided in Paragraph 15, below. If Buyer terminates the Contract, Buyer may, at its option, purchase substitute goods or services elsewhere and charge the Seller with any losses and expenses incurred by Buyer in connection therewith. Buyer reserves the right to refuse delivery of goods which is made in advance of the delivery date specified herein and to return such goods to Seller at Seller's expense. If Buyer accepts early delivery, invoice payment terms will be calculated from the date of scheduled delivery. Buyer will have no liability for payment for goods delivered to Buyer which are in excess of quantities specified in the Contract and the applicable delivery schedules. Such goods shall be subject to rejection and return at Seller's expense, including (but not limited to) transportation charges both ways. The foregoing remedies are in addition to, and not in lieu of or in limitation of, any other rights and/or remedies Buyer may have under applicable law or under the terms of the Contract. Acceptance by Buyer of all or part of the goods shall not constitute a waiver by Buyer of its claims arising from delays in delivery.

**9. Inspection and Acceptance of Goods.** (A) Except as is otherwise provided in this Purchase Order, final inspection and acceptance of goods shall be made as promptly as practical after delivery. Notwithstanding the foregoing, the failure of Buyer to promptly inspect and accept or reject the goods, or to detect defects by inspection, shall not: (1) relieve Seller of any liability for the failure of the goods to conform to the requirements of the Contract; and (2) result in the imposition of any liability whatsoever upon Buyer. (B) In the event that any goods are defective in design, materials or workmanship, or otherwise not in conformity with the requirements of the Contract Buyer

## UPS INDUSTRIAL SERVICES, LLC. & AFFILIATES – TERMS AND CONDITIONS (MATERIALS/SERVICES)

shall have the right to: (1) reject the goods and, in accordance with Paragraph 15, below, terminate the Contract for default as to the rejected goods; (2) reject the goods and require correction by the Seller; (3) reject the goods and return the goods to Seller at Seller's expense; (4) impose and debit against Buyer's account an administrative charge for each rejection processed; (5) accept the goods and deduct from the amount due Seller the cost of remedying the defects; and/or (6) accept the goods and deduct from the amount due the Seller the greater of (i) any damages incurred by Buyer as a result of the defect or non-conformity in question, or (ii) the difference in value of the goods as delivered and the purchase price under the Terms and Conditions of the Purchase Order. If Buyer elects to reject the goods and require their correction, Seller shall, at no expense to Buyer, promptly correct or replace them with goods conforming to the requirements of the Terms and Conditions of the Purchase Order in accordance with Buyer's instructions. If Seller, fails to do so promptly Buyer may either: (1) replace or correct such goods and charge Seller the costs incurred to do so; or (2) terminate the Purchase Order, including the Terms and Conditions on the face and reverse side hereof, in accordance with Paragraph 15, below. (C) Acceptance of all or part of the goods shall not be deemed to be a waiver of Buyer's right to revoke acceptance, to reject the goods, and to return all or any portion of the goods because of a failure of the goods to conform to the requirements to the Purchase Order (including, but not limited to, any breach of warranty). (D) Seller shall be solely responsible for the cost of returning any rejected goods to the Seller, including (but not limited to) handling and transportation charges. (E) Buyer is not obligated to accept partial deliveries or excess deliveries. Buyer reserves, and shall at all times, have, the right to return quantities of goods delivered in excess of 5% greater than of the original Purchase Order quantity. (F) Buyer shall not be liable for failure to accept any part of the goods, if such failure is the result of any cause beyond the control of Buyer. Such causes include (but are not limited to): (1) fires; (2) floods; (3) Acts of God; (4) Strikes; (5) differences with employees; (6) casualties; (7) delays in transportation; (8) shortages of transport, (9) inability to obtain materials or machinery; and/or (10) total or partial shutdown of Buyer's plant for any cause. (G) Payment for any goods shall not constitute acceptance of the goods. (H) The remedies of the Buyer which are set forth in this Paragraph 9 are in addition to, and not in lieu of or in limitation of, any other rights and/or remedies which Buyer may have under applicable law or

under the terms of the Terms and Conditions of this Purchase Order.

**10. Title and Risk of Loss.** Unless otherwise provided in this Purchase Order, title and risk of loss with respect to goods to be furnished pursuant to this Contract shall remain with Seller until actual delivery of the goods to, and acceptance thereof by, the Buyer, at which time title and risk of loss will pass to the Buyer.

**11. Seller's Warranties.** Seller warrants that it shall have good and marketable title to all goods furnished pursuant to the Terms and Conditions of the Purchase Order and such goods shall be delivered to Buyer free and clear from all liens and encumbrances. Seller further warrants that all goods furnished pursuant to the Purchase Order shall be free from defects in material and workmanship and shall be in conformity with the requirements of the Purchase Order. Seller further warrants that such goods shall be merchantable and fit for the purpose for which they are purchased and shall be free from defects in design. Buyer's approval of Seller's design shall not be construed to relieve Seller of this warranty. Seller agrees that the warranties set forth in this Paragraph 11 shall survive acceptance of the goods. Said warranties shall be in addition to, and not in limitation or replacement of: (1) any warranties of additional scope given by Seller to Buyer, which warranties of additional scope are incorporated by reference in the Purchase Order; and (2) any warranties which may exist as a matter of law. None of the warranties set forth in this Paragraph 11 and no other implied or express warranties shall be deemed disclaimed, limited or excluded unless evidenced by an amendment to the Purchase Order executed by the Buyer in accordance with the provisions of Paragraph 3 above. In the event of a breach of any of the foregoing warranties, Buyer shall have such remedies as are provided under this Purchase Order and within these Terms and Conditions and are as provided by law. Any remedies specified in the Terms and Conditions for a breach of warranty shall be in addition to, and shall not be in lieu of or otherwise limit, any remedy which Buyer may have under applicable law, including (without limitation) claims for damages.

**12. Confidentiality of Information.** (A) All information disclosed by Buyer to Seller in connection with the negotiation, execution and performance of the Purchase Order (the "Confidential Information") shall be considered confidential to Buyer. Confidential Information includes, but is not limited to: (1) technical information (including, but not limited to, designs, blueprints, specifications, and

## UPS INDUSTRIAL SERVICES, LLC. & AFFILIATES – TERMS AND CONDITIONS (MATERIALS/SERVICES)

engineering data); and (2) business information relating to Buyer (including, but not limited to, the existence, Terms and Conditions of the Purchase Order, the intended use of the goods and services covered by the Purchase Order and these Terms and Conditions, the business plans of the Buyer, information relating to customers of the Buyer, and so forth). Seller shall: (1) hold all Confidential Information in strict confidence; (2) take all necessary and appropriate precautions to maintain the confidentiality of the Confidential Information; and (3) use the Confidential Information solely for the purpose of fulfilling Seller's obligations under the Purchase Order. Seller shall be liable to Buyer for any breach of such obligations by Seller's employees, agents, representatives and subcontractors. (B) Unless otherwise agreed by the Seller and Buyer in writing, any information which the Seller has disclosed or may hereafter disclose to the Buyer in connection with the negotiation, execution and performance of the Contract shall not be deemed to be confidential or proprietary information to Seller and Buyer may use such information without restriction.

**13. Indemnifications.** Seller agrees to defend, indemnify and save harmless Buyer, its officers, agents, successors, assigns and customers against all claims, demands, damages, costs, expenses, attorney fees or liability of any kind which arise from, or are related in any way to: (1) the actual or alleged infringement of any trade name, trademark, copyright or patent, or the misappropriation of any trade secrets or confidential information arising in connection with the possession, sale or use of the goods delivered, or services rendered, to Buyer under the Purchase Order; (2) Injuries or damages to any person or property arising from the performance or nonperformance of services for Buyer, if the Purchase Order calls for the performance of such services; (3) the performance or nonperformance of the Purchase Order by Buyer or any agent or subcontractor of Buyer; and/or (4) the claims of third parties relating to or arising in connection with services performed and/or the goods delivered under the Purchase Order. Seller further agrees, upon receipt of notification from Buyer, to promptly assume full responsibility for the defense of any and all such claims, suits, actions or proceedings for which Seller is obligated to provide indemnification under this Paragraph 13.

**14. Insurance.** If the Purchase Order covers the performance of services for Buyer, Seller agrees to maintain insurance coverages in the minimum amounts: (1) Workers Compensation-statutory limits for the state(s)

in which services are to be performed; (2) Commercial General Liability-\$1,000,000 per occurrence/\$2,000,000 aggregate; (3) Automobile Liability-\$1,000,000 occurrence/\$2,000,000 aggregate; Excess/Umbrella-\$4,000,000 for excess beyond Commercial General Liability and Automobile Liability; and (5) Property Damage-\$100,000. To the extent that the Scope of Work involves Seller utilizing Crane & Rigging equipment/services, Seller shall be required to provide proof of coverage of \$10,000,000 excess and \$1,000,000 riggers on hook liability in addition to the coverage listed above. For any scope of work involving engineering services, Seller will be required to provide proof of coverage for Professional Liability Insurance of \$1,000,000 per occurrence. Upon Buyer's request, Seller shall furnish evidence of such coverages to Buyer in such form as is satisfactory to Buyer. Compliance by Seller with the foregoing insurance requirements shall not affect or limit Seller's obligations to indemnify Buyer under Paragraph 13 above.

**15. Termination for Default.** Buyer may terminate for default all or any part of the undelivered portion of the Purchase Order if Seller: (1) does not make timely delivery of conforming goods as specified in the Purchase Order; (2) materially breaches any of the Terms and Conditions of the Contract; or (3) so fails to make timely progress as to make it unlikely that Seller will be able to perform under the Terms and Conditions of the Purchase Order; or (4) execution by Seller of an assignment for the benefit of creditors. The exercise by Buyer of the right to termination hereunder shall not result in any liability to Buyer nor have the effect of waiving any remedies or damages to which Buyer might otherwise be entitled. The remedies set forth in this Paragraph 15 are in addition to, and not in lieu of or in limitation of, any other rights and/or remedies Buyer may have under applicable law or under the terms of the Purchase Order. In the event that a court of competent jurisdiction should determine that Buyer wrongfully terminated the Purchase Order for default by the Seller, such termination shall be deemed to be a termination for convenience by Buyer pursuant to Paragraph 16, below, and the liability of Buyer therefor shall be limited as provided in Paragraph 16, below.

**16. Termination by Buyer for Convenience.** Buyer may, for the convenience of Buyer and at Buyer's sole option and discretion, terminate the Purchase Order, in whole or in part, by written notice of termination. Upon receipt of such notice, Seller shall terminate, pursuant to the notice, the work started under the Purchase Order. Seller will

## UPS INDUSTRIAL SERVICES, LLC. & AFFILIATES – TERMS AND CONDITIONS (MATERIALS/SERVICES)

promptly advise Buyer of: (1) the quantities of work in process and material on hand or purchased specifically for the Purchase Order prior to termination; and (2) the most favorable disposition that Seller can make thereof. Seller shall comply with Buyer's instructions regarding disposition of such work and material. Unless otherwise directed by Buyer, finished work shall be delivered to Buyer by Seller in accordance with the terms of the Purchase Order. Within thirty (30) days after receipt of the notice of termination, Seller shall submit its claims, if any, relating to the termination. Buyer shall have the right to verify such claims at any reasonable time by inspecting and auditing the records, see Paragraph 7, facilities, work or materials of Seller relating to the Purchase Order. In the event of a timely claim, Buyer shall pay Seller: (1) the Purchase Order price, pro rata, for finished work; and (2) the cost to Seller (excluding profit, overhead or losses) of work in progress and raw material, based on any audit Buyer may conduct and generally accepted accounting principles. Such amount shall be reduced by the following: (1) the reasonable value or cost (whichever is higher) of any items used or sold by Seller without Buyer's consent; (2) the value of any defective, damaged or destroyed work or material; and (3) the amount received, or which may reasonably be expected to be received, by Seller for usable and/or saleable raw materials or work in progress which can be used or disposed of by Seller in a commercially reasonable manner in mitigation of its claim. Buyer shall make no payment for finished work, work in process or raw material fabricated or procured by Seller in excess of Buyer's written releases. Payment as provided under this Paragraph 16 shall constitute Buyer's only liability in the event the Purchase Order is terminated under this Paragraph 16. Seller's acceptance of such payment shall constitute acknowledgment that Buyer has fully discharged such liability. In no event shall Buyer be responsible for any lost profits, loss of use of capital, or any other form of direct, indirect, incidental or consequential damages with respect to any termination of the Purchase Order pursuant to this Paragraph 16. Except as otherwise provided in Paragraph 15, above, the provisions of this Paragraph 16 shall not apply to any termination by Buyer for default by Seller or for any other cause allowed by law or under the Purchase Order.

**17. Compliance with Applicable Laws.** Seller agrees that, in the performance of the Purchase Order, it will comply with all applicable laws, regulations and orders of the United States or of any state or political subdivision. Without limiting the generality of the foregoing, Seller agrees that it will include the following statement on all

invoices: "Seller represents that, with respect to the production of the goods covered by this invoice, it has fully complied with all provisions of the Fair Labor Standards Act of 1938, as amended." The Seller further agrees that the representations and provisions required by Section 202 of Executive Order No. 11246 of September 24, 1965, as to nondiscrimination in employment, are hereby incorporated in, and made a part of the Contract, by reference.

**18. Performance by Seller.** This Purchase Order is issued to Seller in reliance upon Seller's personal performance, and Seller agrees not to assign the Purchase Order or to delegate the performance of its duties without the prior written consent of Buyer. Any such assignment or delegation which is attempted without the prior written consent of Buyer shall be void, and shall constitute a material breach of the Seller's obligations under the Purchase Order.

**19. No Waiver.** No waiver of any right of the Buyer under the Purchase Order or under law shall be effective unless executed in writing by Buyer. Buyer's failure or delay in enforcing strict compliance with any provision of the Purchase Order shall not be construed as a waiver of such provision or right. The obligations of Seller with respect to any such provision or right shall continue in full force and effect, and may subsequently be enforced by Buyer at any time.

**20. Buyer's Property.** Unless otherwise agreed by the Buyer and the Seller in writing, the following items (collectively, the "Buyer's Property") shall be, and shall remain, the personal property of the Buyer: (1) all tools, equipment, patterns, fixtures, drawings, or materials of every description furnished to Seller by Buyer or specifically paid for by Buyer, and any replacements thereof; (2) all "Special Tooling" as defined below, and any replacements thereof; (3) all copyrights in all plans and/or drawings furnished to Seller by Buyer; and (4) all trade secrets, intellectual property and other proprietary rights encompassed within the "Confidential Information," as defined in Paragraph 12, above. The Buyer's Property, and whenever practical each individual item of the Buyer's Property, shall be plainly marked as identified by Seller as property of Buyer and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Buyer's Property and shall not use Buyer's Property except in filling Buyer's orders. Buyer's Property, while in Seller's custody or control, shall: (1) be held at Seller's risk; (2) be kept insured by Seller at

## UPS INDUSTRIAL SERVICES, LLC. & AFFILIATES – TERMS AND CONDITIONS (MATERIALS/SERVICES)

Seller's expense in an amount equal to the replacement cost thereof, with loss payable to Buyer, and (3) be subject to removal at Buyer's request. In the event of removal, Seller shall prepare Buyer's Property for shipment and redeliver it to Buyer in the same condition as originally received by Seller, reasonable wear and tear expected. Seller shall permit Buyer to enter Seller's facilities at any time during Seller's hours of operation to retrieve and remove any property of Buyer. The term "Special Tooling" as used in this Paragraph 20 means all jigs, dies, fixtures, molds, patterns, special cutting tools, special gauges, special test equipment, other special equipment and manufacturing aids, and drawings and any replacements of the foregoing, acquired or manufactured or used in the performance of the Purchase Order, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of the goods to be produced under, or the performance of the services of the type required by, the Purchase Order. The term does not include: (1) items of tooling or equipment heretofore acquired by Seller, or replacements thereof, whether or not altered or adapted for use in the performance of the Purchase Order; (2) consumable small tools; or (3) general or special machine tools or similar capital items.

**21. Independent Contractors.** The Buyer and Seller are strictly independent contractors with respect to one another, and nothing in the Purchase Order shall be construed as rendering a party the partner, joint venture, agent and/or employee of the other party.

**22. Applicable Law.** The validity, performance, and all matters arising from or relating to the interpretation and effect of this Purchase Order shall be governed by the laws of the State of Texas, Harris County, USA. Any litigation arising here from or relating hereto shall be brought and decided exclusively in the State of Texas or federal courts located in Harris County, Texas. Buyer and Seller hereby agree to submit to the personal jurisdiction of such courts for these matters.

**23. Arbitration.** Any dispute, controversy or claim arising out of or relating to this Purchase Order, or the breach thereof, shall be settled by arbitration. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and shall take place in Houston, TX. The decision of the arbitration panel shall be binding upon the parties and judgment on the award may be entered in any court of competent jurisdiction.

**24. Recovery of Expenses.** The Buyer shall have the right to recover from the Seller all costs and expenses (including, but not limited to, attorneys' fees) incurred by the Buyer in enforcing the provisions of this Purchase Order.