



COMMERCIAL CARRIER PURCHASE ORDER

W&W AFCO (Buyer)		W&W AFCO Address	
Project		P.O. Date	P.O. #
Project Manager		Point of Origin (City and State)	
Ordered By	Review Date / Initials	Delivery Date	Cost Code
	/		
Mileage	Fuel Surcharge	Legal Rate Per Load	
Issue To (Staging Yard):		Ship To (Destination):	

Terms and Conditions

This Purchase Order shall be governed by Title 49 of the United States Code, Title 49 of the Code of Federal Regulations, and the Terms and Conditions set forth in this instrument.

Any Bill of Lading issued under this purchase order shall serve as evidence of pickup and receipt only. The terms of this Purchase Order shall prevail and control over any terms included in any Bill of Lading associated with this Purchase Order.

DESCRIPTION

I. DESCRIPTION OF SHIPMENT (include attachment if necessary):

II. CHARGES:

- A. Permit Rates per Load:**
- B. Demurrage (if applicable):**
- C. Detention (if applicable):**
- D. Bobtail charges (if applicable):**
- E. Deadhead charge (if applicable):**

III. SCHEDULE: Early ship dates are not allowed without written approval from Buyer. Carrier agrees to coordinate exact shipping date with Buyer’s Shipping and Project Management Departments. Because this is a construction project and timely delivery is crucial, time is of the essence of this Purchase Order and all its provisions. If Carrier cannot support the final delivery schedule or requires adjustment to their pricing, Buyer reserves the right to cancel all, or a portion, of this PO.

IV. PAYMENT TERMS: Payments shall be made on a monthly basis with Carrier being paid within seven (7) days after Buyer receives payment for the shipment.

V. TERMS AND CONDITIONS:

This Purchase Order (“PO”) includes the following Terms and Conditions:

1. **ACCEPTANCE.** Acceptance of this PO is expressly limited to the terms stated herein and person or entity to which this PO has been issued (“Carrier”). By accepting this PO or doing anything in connection therewith, Carrier agrees to be bound by, and to carry out, perform and discharge fully and faithfully each and

COMMERCIAL CARRIER PURCHASE ORDER

every undertaking, liability and obligation set forth in this PO. Additional or different terms proposed by Carrier shall not be applicable, unless accepted in writing by Buyer. No change in modification of or revision to this PO shall be valid unless in writing and signed by an authorized representative of Buyer. Notwithstanding, should any terms conflict between this PO and any other writing, the terms of this PO shall take precedence over any terms in other writings signed by the Buyer.

2. SHIPMENTS. a. Carrier understands that Buyer's production schedules are based upon the agreement that goods and materials will be delivered by the date specified on the face of this PO.

b. Carrier shall be responsible for loss of goods or materials shipped hereunder until such goods or materials are all delivered to the named point, unloaded, inspected, and receipt acknowledged by an authorized representative of Buyer. Claims for damaged freight shall be the responsibility of Carrier and no responsibility is accepted by Buyer for the submission of such claims. All deliveries shall be to the satisfaction of Buyer. Unless otherwise stated, Carrier shall deliver all goods or materials to the named point. Special freight charges will not be authorized for any purpose whatsoever unless prior written authorization has been given by Buyer. In such event, any such special freight charges shall be subject to determination under the change cause.

c. Carrier agrees to deliver all goods and materials to Buyer, or its designee, at the place designated on this PO, clear of all claims, encumbrances, or liens and, upon request by Buyer, furnish from any subcontractors, consignors, and others connected therewith, waivers, releases, performance or payment bonds or other evidence of payment or indemnity satisfactory to Buyer. No payments will be due Carrier until the requirements of the immediately preceding sentence have been accomplished.

3. OBLIGATIONS OF CARRIER. a. Carrier now has and shall at all times while performing services under this PO, have all necessary permits and licenses to transport the shipment as required.

b. Carrier will furnish all equipment required for the performance of its services and will maintain all such equipment in good repair and condition.

c. Carrier will employ and be solely responsible for all personnel employed with respect to any shipment and will be solely responsible for each such employee's licensing and competence.

d. Carrier will not cause or permit any shipment to be transported by any other motor carrier or any other substitute mode of transportation.

e. Carrier shall not claim, and hereby waives any right to claim, and lien in any shipment under this PO.

4. COMPLIANCE WITH LAWS. Carrier shall comply with all applicable local, state and federal laws, regulations, and ordinances applicable to this PO and its terms and conditions, including the Interstate Commerce Commission and Department of Transportations. Carrier shall also comply with all applicable antidiscrimination, safety, and similar laws and regulations and will, upon request, sign any necessary documentation relative thereto. Carrier shall obtain and maintain on an active and current basis, all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted or issued by any governmental or regulatory authority having jurisdiction over the subject matter of this PO. Carrier shall defend, protect, save harmless, satisfy and indemnify Buyer for all loss, cost, delay, penalties, liability, damage, and expense, including all attorneys' fees, which Buyer may sustain as a result of the failure of Carrier to comply with any laws.

5. TAXES. If any sales, use, excise, income, property, unemployment, social security or other government tax shall now or hereafter be made or levied by any local, State or Federal government on the shipment of the goods or materials covered by this PO, such tax shall be paid by Carrier, or its assigns and the price of shipping services stated in this PO shall not be increased thereby.

6. Waiver of Applicability of 49 U.S.C. § 14706. The Parties hereby irrevocably waive all applicability of 49 U.S.C § 14706 to any claims that may result under this PO. The terms and conditions established in this PO shall govern and control any such claims.

6. INDEMNIFICATION. To the fullest extent permitted by law, Carrier, shall protect, indemnify and hold harmless Buyer, together with Buyer's past, present and future officers, directors, shareholders, employees, agents, representatives, affiliates, executors, and administrators, and their successors, heirs and assigns, from all claims, demands, actions, obligations, liabilities, fines, penalties, damages (including any incidental, consequential, indirect, special, or punitive damages), losses, costs and/or expenses of every kind and nature, (including attorney's fees, filing fees, recording fees, court costs, investigative costs, documentary evidence and expert witness fees, arbitrator/mediator fees and expenses, and the costs of any bonds, whether taxable or not) resulting from, or in any manner arising out of or in connection with, directly or indirectly, (a) any acts of omission or commission caused wholly or in part by Carrier, its agents, servants, employees, subcontractors or anyone acting by, through or on behalf of Carrier; (b) Carrier's breach of this PO or failure to perform; or (c) Carrier's, or its employees, representatives, or agents, presence at the Property, including their acts, omissions or negligence while at the Property, and/or their failure to use the highest degree of care and caution while at the Property. Carrier shall be responsible for all shipments while in transit and shall hold Buyer harmless from and indemnify Buyer against any claims of liability resulting from loss or damage to any freight transported by Carrier or to any claim for injury or damages resulting from the transportation of a shipment, including all reasonable attorneys' fees and costs of defense. Carrier shall be liable for full loss resulting from any loss, damage, injury, or delay on shipments transported under the terms of this PO. Full actual loss is the replacement cost of freight tendered to Carrier for transport. Carrier shall also indemnify and save harmless Buyer from claims for unpaid bills of Carrier and those entities in the contractual claim below Carrier. Buyer may withhold payments due hereunder to cover such indemnity. In no event will Buyer be liable for any incidental, consequential, indirect, special, or punitive damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to loss of use, loss of revenue or income, loss of profits, loss of business, loss of financing, loss of reputation, loss or management or employee productivity (or of the services of such persons), or business interruption. This agreement to indemnify shall also survive the termination or expiration of this PO.

7. RELEASE OF LIABILITY WHEN ACCESSING BUYER'S PROPERTY. a. In the event Carrier's employees, agents, or representatives are granted access to certain parts of Buyer's steel fabrication facility, storage areas, and/or shipping yards (the "Property"), Carrier will advise its employee, agent and/or representative accessing the property of the inherent hazards and risks associated with being on the Property so that each employee, agent or representative fully understands that these risks can lead to bodily injury, death, property loss, or damage. By accessing the Property, Carrier, its employees, agents, and representatives assume all risk and responsibility for any and all claims (not caused by the gross negligence, intentional, wanton, or willful misconduct of Buyer or its employees) for damages, including, but not limited to, personal injury, death, medical expenses, disability, lost wages, loss of earning capacity, and property damages, which may be incurred by the Carrier, its employees, agents and representative as a result of its/his presence on the Property.

b. Carrier's employee, agent and representative shall at all times while at the Property, use the highest degree of care and caution to avoid the inherent hazards and risks associated with being on a steel fabrication facility and/or storage/shipping yard ("Property").

c. Carrier shall immediately notify Buyer of any injury suffered by any of its employees, representatives, or agents while at the Property.

8. INSURANCE. Carrier shall provide workers' compensation coverage pursuant to applicable state law and employers' liability coverage for all employees engaged in the work. Unless otherwise specified elsewhere in this PO, Carrier shall carry the following insurance: (i) Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for injuries, including accidental death, occurring in any one accident; (ii) Auto Liability coverage of not less than \$1,000,000; (iii) Cargo Liability insurance in the amount of **not less than** \$100,000 or \$250,000 with a deductible not to exceed \$10,000 (unless approved in writing by Buyer); and (iv) Umbrella/Excess Liability not less than \$3,000,000 aggregate (Coverage shall be on a primary and non-contributory basis at least as broad as the primary coverage). At all times, Buyer reserves the right to impose other reasonable insurance requirements on Carrier. Carrier shall furnish Buyer with a certificate of insurance and endorsements to evidence the above insurance prior to the commencement of the work. In jurisdictions requiring mandatory participation in a monopolistic state workers compensation fund, the insurance certificate requirements for the coverage required under section will be satisfied by a letter from the appropriate state agency confirming Carrier's participation in accordance with statutory requirements. Thirty (30) days' notice in writing shall be given to Buyer of cancellation or material changes in the coverage required by this section. If the Carrier in connection with this PO uses subcontractors/sub-Carriers, such subcontractors/sub-Carriers shall be subject to the same requirements as the Carrier. It is the Carriers responsibility to maintain compliance of subcontractor/sub-Carriers. Endorsements (i) Buyer, its officers, employees and agents, are to be named as Additionally Insured (Blanket coverage may be accepted); and (ii) Waiver of rights of subrogation against Buyer for Workers Compensation. The above coverage limits can be attained by individual policies or by combining the primary and umbrella/excess policies. All insurance is subject to Buyer's approval. Any changes to the above limits are only valid when signed by Buyer. Insurance coverage does not limit indemnity or Carrier's obligations under the PO.

9. ASSIGNMENT. Carrier shall not assign this PO, or any part thereof, or delegate any performance hereunder, without the prior written consent of Buyer and Carrier shall not be relieved of any liability under this PO by reason of any such assignment or delegation.

10. TERMINATION. In addition to all other rights and remedies provided for hereunder or under law, Buyer reserves the right to cancel all or any part of this PO at

COMMERCIAL CARRIER PURCHASE ORDER

any time without liability to Buyer if (a) Carrier breaches any of the terms or provisions hereof, or any of the events giving rise to a return or rejection of goods occur, or (b) any proceeding by or any other type of insolvency proceeding is instituted, or (c) Buyer's business is interrupted because of strikes, labor disturbances, lockout, riot, fire, Act of God or a public enemy, or any other cause whether similar or dissimilar to the foregoing, beyond the reasonable control of Buyer, or (d) if the project for which the goods have been ordered hereunder is terminated.

11. CHANGES. Buyer reserves the right to make changes in delivery services to be performed under this PO, or addition thereto or omissions therefrom, upon written orders to Carrier. Any additions or reductions to be made to or from the amount of the PO price resulting from changes in services furnished shall be agreed upon in writing by the parties hereto, such agreement not being valid unless signed by an authorized representative of Buyer.

12. OFF-SETS. In Buyer's sole discretion, Buyer may deduct from any amounts due or to become due to Carrier any sum or sums owing by Carrier to Buyer. Buyer, in the event it deems itself insecure in any manner whatsoever, may reserve from any amounts due or to become due to Carrier, any amount necessary to protect Buyer, for any sums owing by Carrier for services for which debt or debts the assignee or subcontractor or Carrier may have a lien or a claim against Buyer, under any law or statute, for the statutory period before which the claimant or lienholder is required to notify Buyer of such lien or claim; and in the event of any breach by Carrier of any provision or obligation of this PO, or in the event of the assertion by other parties of any claim or lien against Buyer or the premises arising out of Carrier's performance of this PO (or breach thereof), Buyer shall have the right to retain out of any payments due or to become due to Carrier and amount sufficient to completely protect Buyer from any and all loss, damage or expense therefrom, until the situation has been satisfactorily remedied or adjusted by Carrier to Buyer's satisfaction.

13. FAILURE TO PERFORM. a. Carrier shall deliver the goods and materials in a prompt, diligent and expeditious manner and so as to promote the general progress of the entire construction Project and shall not, by delay or otherwise, interfere with or hinder the work of Buyer or any of its subcontractors.

b. In the event Carrier fails to comply or becomes disabled from complying with the provisions herein or refuses to proceed with the delivery, as directed by Buyer or fails to perform said services in accordance herewith, in whole or in part, or fails to perform any term, covenant or condition contained in this PO Buyer may, at Buyer's option, without notice and without prejudice to any other right or remedy, take any steps Buyer deems advisable or necessary to secure such services necessary to the prosecution of the work contained herein, including the procurement of items to be furnished hereunder from another supplier. In case Buyer deems the foregoing procedure necessary, all monies expended and all of the losses, damages and extra expenses shall be deducted from Carrier's price herein stated and if such expenditures together with said losses, damages and extra expenses exceed the amount otherwise due to Carrier agrees to pay to Buyer on demand the full amount of such excess, together with interest thereon at the rate of 10% per annum from the original billing date until paid.

c. Carrier shall reimburse Buyer for any loss or damage which may become due to the General Contractor or Owner by Buyer and extra expenses paid or incurred by Buyer which are due to: (a) Carrier's failure to timely deliver any goods or materials as required herein and/or (b) Carrier's failure to keep with the progress of the general construction work on the Project, and/or (c) Carrier's failure to properly perform any term, covenant or condition contained in this PO.

14. DISPUTES. a. In the event of any dispute, claim, question, or disagreement arising from or relating to this PO or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

b. If they do not reach such solution within a period of sixty (60) days, then upon written notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Such written demand for arbitration shall be made not later than thirty (30) days after the expiration of the above sixty day settlement negotiation period. Demand for arbitration shall be filed in writing with the other party to this PO and with the American Arbitration Association in Oklahoma. The place of arbitration shall be Oklahoma City, Oklahoma County, Oklahoma. The laws of the State of Oklahoma shall govern the validity, construction, interpretation, performance and enforcement of this PO. The prevailing party in the arbitration shall be entitled to receive from the other party or parties thereto reimbursement for all attorneys' fees and all reasonable costs.

c. In agreeing to binding arbitration the parties hereby knowingly and voluntarily waive their right to a jury trial on any claim or cause of action based upon or arising out of, directly or indirectly, this PO, any dealings between the parties relating to the subject matter hereof or thereof, and/or the relationship that is being established between the parties. The scope of this waiver is intended to be all encompassing of any and all disputes that may be filed in any court (including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims). This waiver may not be modified orally, and the waiver shall apply to any subsequent amendment, renewals, supplement or modifications to this PO. In the event of litigation, this PO may be filed as a written consent to a trial by the court.

d. Buyer, in its sole and absolute discretion, may elect that all claims for loss and damage shall be handled and processed in accordance with regulations published in the Code of Federal Regulations at 49 CFR Part 370.

15. FEDERAL PROJECTS (If applicable). This PO is subject to provisions of Executive Order 11375 of October 13, 1967; Executive Order 11758 of January 15, 1974; Section 503 of The Rehabilitation Act of 1973; The Vietnam Era Veterans Readjustment Act of 1974, as amended, 38 U.S.C. §4212 (formerly 2012); and the regulations of 41 C.F.R. Chapter 60. By virtue of the provisions of these Executive Orders and the above Acts, Carrier will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, handicap, or status as a disabled veteran or a veteran of the Vietnam Era.

16. INDEPENDENT CONTRACTOR. It is understood that all times that Carrier is an independent contractor. All persons hired or employed by Carrier in the discharge of this PO shall be considered employees of Carrier and not of Buyer and shall be solely and exclusively under Carrier's direction and control. Carrier nor any of its employees (i) shall be held or deemed in any way to be an agent, employee or official of Buyer, or (ii) shall have the authority to bind Buyer in any manner whatsoever. Any such unauthorized representation or action shall be considered a breach of this PO.

17. ENTIRE AGREEMENT. This PO constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, promises, negotiations, representations or understandings, whether written or oral, between the parties hereto relating to the subject matter of this PO. Any prior agreements, promises, negotiations, representations or understandings, either oral or written, not expressly set forth in this PO shall have no force or effect. Carrier warrants that no promise or inducement has been made or offered by Buyer or any of its employees, except that as set forth herein and that this PO is not accepted in reliance upon any statement or representation of any other party or their representatives.

18. WAIVERS. Waivers of any breach hereof shall not constitute a waiver of any subsequent breach of the same or any other provision hereof.

19. HEADINGS. The section headings appearing in this PO are inserted as a matter of convenience only, and for reference purposes and are not intended to be part of this PO, or in any way to define, limit, or describe the scope and intent of the particular section to which they refer.

20. GENERAL. a. Any overtime or other additional extraordinary costs incurred by Carrier to comply with this PO shall be borne by Carrier.

b. Notwithstanding anything to the contrary in this PO, Carrier's right to payment for services provided or performed under this PO is expressly conditioned upon the General Contractor or Owner first paying Buyer for such services provided or performed by Carrier. Buyer shall not be obligated to make any payments to Carrier unless and until, and only in the event the General Contractor or Owner pays Buyer for such goods, materials or services provided or performed by Carrier.

c. The parties acknowledge and agree that each has reviewed the terms of this PO, assisted by counsel, if they desired. The parties further agree that the rule of construction that any ambiguities are resolved against the drafting party will be subordinated to the principle that the terms and provisions of this PO will be construed fairly as to all parties and not in favor of or against any party.

d. Buyer shall have the right to request an audit of the books and records of Carrier to the extent that such books and records are applicable to Buyer's rights and Carrier's obligations under this PO. Upon ten (10) days written notice, Carrier shall provide Buyer such information and back up documentation as Buyer may request concerning the rights and obligations of the parties herein.