

# W. L. French Excavating Corporation

## Purchase Terms & Order Conditions

1. The Material being purchased hereby is for the use of Contractor in the construction of the project identified on the reverse side (hereinafter referred to as the "Project") for the Owner, in accordance with the Plans and Specifications prepared by the Architect. Materials received which do not conform with said Plans and Specifications are subject to return to the Vendor at the Vendors risk and expense. Schedule of Plans, if applicable is attached as Exhibit "B".
2. To the fullest extent permitted by law, subcontractor hereby acknowledges and agrees that it shall indemnify, hold harmless and defend W. L. French Excavating Corporation and the Owner, and each of their officers, directors, members, employees, agents, affiliates, subsidiaries and partners from and against all claims, damages, judgments, settlements, losses and expenses including but not limited to, attorney fees, arising out of or resulting from the performance of the Subcontractor's Work and / or arising out of or resulting from any act or omission of the Subcontractor, its employees, agents or subcontractors.
3. To the fullest extent permitted by law, the Subcontractor / Vendor hereby agrees to fully defend W. L. French Excavating Corporation and the Owner, and each of their officers, directors, members, employees, agents, affiliates, subsidiaries and partners, [1] from any complaint against any of them for injury or damage that is alleged in the complaint to arise, in whole or in part, out of the subcontractor's work, or out of any act or omission of the Subcontractor / Vendor, its employees, agents or subcontractors and/or [2] from any complaint against any of them alleging injury or damage to an employee or the subcontractor. The party defended hereunder shall have the right to choose its own counsel to be paid for by the subcontractor.
4. In the event of any breach by Vendor of any provision or obligation of the Agreement, or in the event of the assertion by other parties of any claim or lien against Contractor, Owner or the premises, arising out of the Vendor's performance of this agreement, Contractor shall have the right to retain out of any payments due or to become due to Vendors an amount sufficient to protect the Contractor completely from any and all loss, damage or expense factor.
5. Any controversy or claim arising out of or relating to this Purchase Order shall be settled by arbitration in accordance with the Construction Industry Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof.
6. Contractor may, at any time, terminate this order in whole or in part written or telegraphic notice or verbal notice confirmed in writing. Upon termination for convenience of Contractor, settlement shall be made in accordance with the principles contained in section 52.249-2, Alternate I of the Federal Acquisition Regulation (FAR) relating to termination of subcontractors which section, as in effect on the date hereof, is incorporated hereby reference. If, however, termination is occasioned by Vendor's breach of any condition hereof, including breach of warranty, or by Vendor's failure to ship the material at the time promised. Vendor shall not be entitled to any claim or costs or to any profit referred to in said FAR and Contractor shall have against Vendor all remedies provided at law and equity.
7. Subcontractor / Vendor shall, at Subcontractor / Vendor's expense, purchase and maintain insurance and provide W. L. French Excavating Corporation with a Certificate of Insurance in accordance with Exhibit "A" – Insurance Requirements attached hereunto. Subcontractor / Vendor shall purchase and maintain such insurance through the end of the warranty period specified below. Certificate of Insurance shall provide for cancellations of not less than thirty [30] days written notice. Certificate holder shall be W. L. French Excavating Corporation.
8. Vendor acknowledges that payment by Owner to Contractor for materials supplied by Vendor shall be condition precedent to payment by contractor to Vendor. Vendor shall not be entitled to interest on invoices for a period of 120 days after delivery.
9. Acceptance of this purchase order is limited to the terms hereof. No agreement, order acknowledgement, or other understanding in any way modifying the conditions of this contract will be binding upon Contractor unless made in writing and signed by its authorized representatives. This Purchase Order constitutes the sole agreement between Vendor and Contractor and all prior or contemporaneous oral or written terms are superseded hereby.
10. Vendors shall furnish, for approval of Architect, all shop drawings and such samples as Architect may require, and all workmanship and materials for the Project shall be in strict accordance with said approved samples.
11. Vendor is familiar with the Fair Labor Standards Act in relation to wages and hours and where such act applies to the materials furnished under this contract, Vendor agrees to comply with the terms and provisions thereof and agrees to hold Contractor harmless from any violation of the same by Vendor.
12. Time is of the essence of this Purchase Order, and Vendor shall be liable for any such damage incurred by Contractor arising out of Vendor's failure to timely perform hereunder.
13. It is mutually agreed between the parties hereto that no certificate given or payment made under this contract, except the final certificate or final payment, shall be conclusive evidence of the performance of this contract, wither wholly or in part, and that no payment shall be construed to be acceptance of defective work or improper materials. Contractor shall not be deemed to have accepted any item from Vendor until after each item has been unpacked or uncreated by the contractor, and in the case if equipment until started and tested by Contractor.
14. Vendor shall not be sublet or assign this contract or any portion thereof without the written consent of contractor.
15. Contractor or its representatives shall have full and free access to the shops, factories or other places of business of Vendor, or the vendors of this Vendor, in order that it may inform itself as the general condition and progress of the work herein contemplated.
16. All work materials furnished hereunder shall comply, in every respect, with all federal and state laws and municipal codes, ordinances and regulations relating thereto or relating to Vendor's conduct of its business.
17. Vendor warrants and guarantees there materials furnished hereunder and agrees to repair or replace at its own expense any defect in materials which may occur or develop within one (1) year after substantial completion of Project. If material furnished to Contractor shall fail to conform to this agreement or to any express or implied warranty, Vendor shall furnish instructions for its disposition. Any expense or changes involved in such disposition shall be borne by Vendor.
18. Contractor reserves the right at any time to make changes in one or more of the following: (a) Specifications, drawings, plans and other data incorporated in the Purchase Order where the items to be furnished are to be specifically manufactured for Contractor; (b) Methods of shipping or packing, (c) Place of delivery; and (d) Time of delivery. If any such change causes an increase or decrease in the cost or the time required for Vendor's performance of the Purchase Order, an equitable adjustment shall be made in the price or delivery schedule, or both. Any claim by Vendor for adjustment under this clause shall be deemed waived unless submitted in writing within ten (10) days from the receipt by Vendor of the change. Price increases or extension of time for delivery shall not be binding on contractor unless evidenced by a Change Order issued and signed by contractor.

ACKNOWLEDGED AND ACCEPTED BY:

VENDOR:

W.L. FRENCH EXCAVATING CORPORATION:

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