



**EXHIBIT “B”
TERMS and CONDITIONS
THIS PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND
CONDITIONS**

This Purchase Order constitutes an offer to purchase, and not an acceptance of any offer to sell, the goods and any services described herein, which may be accepted only in accordance with its terms and without modification, addition, deletion, or alteration. In the event Seller’s quotation, sales proposal, sales order, acknowledgement, confirmation, invoice, or other forms state terms additional to or different from those set forth herein, this Purchase Order shall be deemed a notification of objection to such additional and/or different terms and a rejection thereof.

1. DEFINITIONS

As used herein, the term “Purchaser” means the party designated as such on the face of this Purchase Order, including its successors in interest, and the term “Seller” means the party designated as such on the face of this Purchase Order.

2. PURCHASE ORDER

This Purchase Order, when properly signed by Purchaser and bearing an order number, is the only authorization which will be recognized by Purchaser for charges to its account.

3. CONFORMING GOODS

Neither the quantity nor the quality of the goods delivered by Seller to Purchaser shall differ from those specified on the face hereof or the documents incorporated therein by reference, nor shall any other modifications of this Purchase Order be effective unless such changed quantity or other modification is first ordered by Purchaser by written change order. Seller shall make no shipment on nonconforming goods, whether as an accommodation or otherwise, unless first authorized in writing by Purchaser.

4. SELLER’S SKILL AND JUDGEMENT; SELLER’S WARRANTIES

In placing this Purchase Order, Purchaser is relying on Seller’s skill and judgment in selecting and providing the proper goods and any applicable services for Purchaser’s specified use. Seller warrants to Purchaser and its successors in interest that the goods and any services covered hereby shall correspond with the description of the same on the face of this Purchase Order, shall conform to any applicable specifications, shall be new and of good, merchantable quality unless otherwise specified, and shall be fit for the purpose for which they are furnished. Seller also warrants that said goods are free and clear of all liens and encumbrances whatsoever and that Seller has a good and marketable title to same, and Seller agrees to hold Purchaser free and harmless against any and all claims to said merchandise.

5. SELLER'S RESPONSIBILITY AND INDEMNITY

By acceptance of this Purchase Order, Seller assumes all risks in the furnishing of goods and in the performance of work or services contemplated by this Purchase Order. Seller agrees to protect, defend, indemnify, and hold harmless Purchaser, its agents, officers, directors, employees, shareholders, representatives, insurers, parent, subsidiary and affiliated companies, contractors, and subcontractors, and all of their respective agents, officers, directors, employees, shareholders, insurers, contractors, and subcontractors (collectively, for purposes of this Article, "Purchaser") from and against all claims, losses, costs (including but not limited to, reasonable attorneys' fees and court costs and other costs of suit), demands, damages, lawsuits, suits, judgments, penalties, civil penalties, liabilities, debts, expenses, and causes of action of whatever nature or character, whether known or unknown, whether pre-dating this Contract or not, and whether arising out of contract, tort, strict liability, breach of warranty, products liability, misrepresentation, violation of applicable law, and/or any cause whatsoever, without limit and without regard to the cause or causes thereof, including, without limitation claims due to bodily injury, alleged bodily injury, death, or loss of personal property (collectively referred to herein as "Claims"), which in any way arise out of or are related to Seller's performance under this Contract, and which are asserted by or arise in favor of Seller or any contractor or subcontractor or any of its or their agents, representatives, employees, invitees (and/or their spouses or relatives), insurers, contractors, and subcontractors, WHETHER OR NOT CAUSED BY THE SOLE, JOINT, COMPARATIVE, AND/OR CONCURRENT NEGLIGENCE, FAULT, OR STRICT LIABILITY OF PURCHASER. THIS CONTRACT IS INTENDED TO INDEMNIFY PURCHASER AGAINST THE CONSEQUENCES OF ITS OR THEIR SOLE NEGLIGENCE, FAULT, OR STRICT LIABILITY AND AGAINST THE CONSEQUENCES OF ITS OR THEIR OWN NEGLIGENCE, FAULT, OR STRICT LIABILITY OCCURRING JOINTLY, CONCURRENTLY, OR COMPARATIVELY WITH THE NEGLIGENCE, FAULT, OR STRICT LIABILITY OF CONTRACTOR OR ANY CONTRACTOR OR SUBCONTRACTOR OR ANY OF ITS OR THEIR AGENTS, REPRESENTATIVES, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS. It is the intent of the Purchaser and the Seller hereby to allocate to Seller the duty to purchase insurance for the benefit of all parties who are or may be affected by the goods delivered or to be delivered or services performed or to be performed under or in connection with this Purchase Order, all as set forth in greater detail in Article 6 hereof.

In any and all Claims against Purchaser by any employee of Seller, any contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, the indemnification obligation of Seller under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Seller or any contractor or subcontractor under workers' compensation acts, disability benefits acts, or other employee benefit acts.

Bodily Injury Defined – "Bodily Injury" as used in this Article shall be construed to include, but not limited to, any injury, physical pain, illness, sickness, disease, or

impairment of physical condition of the body as well as any personal injury including but not limited to any invasion of personal rights such as libel or slander, invasion of privacy, tortuous interference with a third party contract, or mental suffering.

If it is judicially determined that any of the indemnity obligations contained herein are invalid, illegal or unenforceable in any respect, said obligations shall automatically be amended to conform to the maximum monetary limits and other provisions in the applicable law for so long as that law is in effect.

6. INSURANCE:

a. During the term of the Contract and until final acceptance by Purchaser of all work to be performed hereunder, Seller shall carry the minimum insurance described below in this Section a, Paragraphs (i), (ii), and (iii) of this Article 6.

(i) Workers' Compensation Insurance and Employer's Liability Insurance including occupational disease in accordance with the laws of States or Provinces where the work is to be performed.

(A) Workers' Compensation Insurance shall have the minimum limits as required by statute for the State or Province where the work will be performed.

(B) Employer's Liability Insurance shall have the following minimum limits:

(B.1) Bodily injury by accident -- \$2,000,000 each accident;

(B.2) Bodily injury by disease -- \$2,000,000 each employee;

(B.3) Bodily injury by disease -- \$2,000,000 policy limit.

If the performance of this Contract requires the use of watercraft or is performed over water, Contractor shall also provide coverage for liability under U.S. Longshoremen's and Harbor Workers' Compensation Act and liability for admiralty benefits and damages under the Jones act.

(ii) Commercial General Liability Insurance, including contractual liability, products, completed operations (completed operations coverage shall be extended for a period of two years following final acceptance of the work by Purchaser), and personal injury liability coverage with limits of not less than \$2,000,000 combined single limits each occurrence.

(iii) Automobile Liability Insurance, on each and every unit of automobile equipment, whether owned, non-owned, or hired, operated, or used by Seller and/or its subcontractors in the performance of this Contract, covering injury, including death and property damage in an amount not less than \$2,000,000 per accident.

- (iv) Nothing contained in this Section shall be construed as limiting the liability assumed by Seller under Article 5 above.
- b. Seller shall abide by the following additional insurance requirements:
- (i) Add to Policies as Additional Insured: All insurance purchased and maintained by Seller in compliance with Section a, Paragraphs (ii) and (iii), of this Article 6, as well as any excess and/or umbrella insurance that Seller purchases and maintains in regard thereto, shall name Purchaser, its directors, officers, agents, representatives, and employees as additional insureds.
- (ii) Waiver of Subrogation: All insurance policies purchased and maintained by Seller in compliance with Section a, Paragraphs (ii) and (iii) of this Article 6, as well as any excess and/or umbrella insurance policies that Seller purchases and maintains in regard thereto, shall be endorsed to provide that underwriters and insurance companies of Seller shall not have any right of subrogation against Purchaser or any of its directors, officers, agents, employees, invitees, servants, insurers, underwriters, and such other parties as Purchaser may designate.
- c. Primary Insurance: All insurance policies purchased and maintained by Seller in compliance with Section a of this Article 6, as well as any excess and/or umbrella insurance policies that Seller purchases and maintains in regard thereto, shall be endorsed to provide that the coverage provided by Seller's insurance shall always be primary coverage, and noncontributing as respects any insurance maintained by Purchaser.
- d. Notice of Cancellation: All insurance policies purchased and maintained by Seller in compliance with Section a of this Article 6, as well as any excess and/or umbrella insurance policies that Seller purchases and maintains in regard thereto, shall be endorsed to provide that thirty (30) days' prior written notice shall be given Purchaser in the event of cancellation or material change in the policies.
- e. The general liability insurance policy purchased and maintained by Seller in compliance with Section a, Paragraph (ii) of this Article 6, as well as any excess and/or umbrella insurance policies that Seller purchases and maintains for this purpose shall be endorsed to provide coverage for liability assumed by the Seller under all written contracts between Purchaser and the Seller.
- f. The Seller and its subcontractors at all times shall waive any right of recovery against Purchaser, or any of its directors, officers, agents employees, invitees, servants, insurers, underwriters, and such other parties as they may designate for loss or damage covered by insurance of the types purchased and maintained by Seller in compliance with Section a, Paragraphs (ii) and (iii) of this Article 6, as well as any excess and/or umbrella insurance policies that Seller purchases and maintains in regard thereto.
- g. With respect to all the insurance described above in Section a of this Article 6 Seller shall furnish Purchaser, prior to the commencement of any operations under this Contract, with a certificate or certificates, properly executed by the insurance carrier,

showing all such insurance to be in force. Said certificates shall include specific reference to compliance with the above Section b, Paragraphs (i), (ii), (iii), (iv) and (v) of this Article 6, shall include the following statement, "The General Liability and any excess and/or umbrella liability insurance certified hereunder includes coverage for liability assumed by the Insured under all written contracts between Purchaser and the Insured".

7. INSPECTION

Purchaser (and Purchaser's customers, including regulatory agencies, while accompanied by Purchaser) may inspect goods at all stages of manufacture. Notwithstanding any prior payment there for or inspection thereof, all goods are subject to inspection and testing by Purchaser after arrival at the ultimate destination; and if the goods are to be incorporated into a plant or other operating facility, Purchaser's inspection and testing of the goods may be made under operating conditions after the goods have been installed. If upon inspection or testing, such goods or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any guarantees or operating or other specification contained herein or any other requirements of this Purchase Order, then without prejudice to any other rights or remedies, Purchaser may return the goods or any part thereof to Seller, and all amounts theretofore paid by Purchaser to Seller on account of the purchase price of such returned goods, together with any costs incurred by Purchaser in connection with the original delivery or return of such goods, shall be repaid to Purchaser by Seller, and all amounts theretofore paid by Purchaser to Seller on account of the purchase price of such returned goods, together with any costs incurred by Purchaser in connection with the original delivery or return of such goods, shall be repaid to Purchaser by Seller. Neither the inspection nor failure to make other provisions of this Purchase Order nor impair Purchaser's right to reject nonconforming goods, Purchaser reserves the right, even after it has paid for an accepted said goods, to make claim against Seller on account of any goods which do not prove to be satisfactory or are defective, irrespective of Purchaser's failure to notify Seller of a rejection of nonconforming goods or revocation of acceptance thereof, or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof.

8. CHANGES

Purchaser may at any time or from time to time issue written instructions requiring additions, changes, deletions, or alterations in the work to be performed under this Purchase Order. Seller shall proceed with the work as instructed immediately if requested to do so by Purchaser in writing. Within ten days after receipt of said instructions, Seller shall furnish to Purchaser a statement in detail of its estimate of the net increase or decrease in cost resulting from its compliance with said instructions. Failure to furnish said statement within the prescribed time shall be deemed to be the equivalent of the statement that there is no increase or decrease in cost. Purchaser will consider the statement so submitted and upon the basis thereof and of such other matters as may be relevant will submit in writing to Seller the proposed amount of increase or decrease in the Purchase Order price. If Seller objects to Purchaser's proposal, it shall so notify Purchaser in writing within ten days after receipt of Purchaser's proposal. Failure to object within the said period shall constitute conclusive acceptance of Purchaser's

proposal. If the Seller and Purchaser do not agree upon the increase or decrease, Seller shall nonetheless continue to perform the work, including any such additions, changes, deletions, or alterations.

9. TERMINATION FOR CONVENIENCE

In addition to and without prejudice to the right to cancel, Purchaser may terminate this Purchase Order in accordance with the following provisions:

a. If this Purchase Order covers goods manufactured or fabricated to Purchaser's specifications or specifications especially prepared by Seller for Purchaser, then at any time prior to delivery of all goods covered by this Purchase Order, Purchaser may terminate this Purchase Order in whole or in part by written or telegraphic notice to Seller, and in such event the following provisions shall apply:

(i) Immediately upon receipt of such notice or termination or upon such other date as may be specified in said notice, Seller shall stop all work in connection with this Purchase Order except as otherwise directed by Purchaser;

(ii) Purchaser shall pay and Seller shall accept as full compensation Seller's actual direct out-of-pocket cost to the date work is stopped, including Seller's reasonable expense in connection with termination of any subcontracts, all as approved by Purchaser, plus six percent (6%) of such costs; provided, that in no event shall the total amount be paid to Seller upon such termination, including payments previously made, exceed that proportion of the aggregate total purchase price specified herein that the work is actually performed hereunder to the date work is stopped bears to the entire work to be performed hereunder;

(iii) The goods or uncompleted portion of the goods shall be the property of Purchaser, and Seller shall safely hold the same for a reasonable time, subject to receipt of Purchaser's written shipping or other disposition instructions.

b. If the goods covered by this Purchase Order are standard stock merchandise, Purchaser may terminate all or any part of the unshipped portion of this Purchase Order at any time by written or telegraphic notice to Seller, and in such event Purchaser shall have no further obligation for cancellation charges or otherwise hereunder except to make payment, subject to other applicable terms hereof, for the goods actually shipped and in transit prior to such termination and to make payment for any goods as to which this Purchase Order is not terminated which are shipped subsequent to such termination.

10. DELAYS

Neither party shall be subject to liability to the other for any delay in performance hereunder due to a cause not reasonably within such party's control, provided the party suffering such force majeure gives prompt notice to the other party of the nature of the event and its estimated duration. If such notice is duly given, the time for performance hereunder shall be extended for such period as may be both reasonable and necessary due to said event.

11. SELLER'S DEFAULT

Time is of the essence in the performance of this Contract. If Seller shall default in performance hereof or breach any of its obligations hereunder or if Seller becomes insolvent or a trustee or receiver of Seller's business or assets is appointed by any court or if Seller shall make an assignment for the benefit of creditors or a petition in bankruptcy is filed by or against Seller, then in any of such event, Purchaser may cancel this Purchase Order in whole or in part by written or telegraphic notice to Seller, and Purchaser shall have no liability or obligation whatsoever to Seller by reason of or resulting from such cancellation, but at Purchaser's sole election it may pay Seller its actual direct costs of performance hereunder to the date of such cancellation, as approved by Purchaser, which costs of performance plus payments previously made shall not exceed that proportion of the aggregate total purchase price specified herein that the work actually performed hereunder, in which event, the goods or uncompleted portions of the goods shall be the property of Purchaser, and Seller shall safely hold the same for a reasonable time subject to receipt of Purchaser's written shipping instructions or other disposition instructions.

12. COMPLIANCE WITH LAW

Seller shall comply with all applicable federal, state and local laws, regulations, rules and orders, including without limitation those pertaining to environmental, health and safety matters. Sellers shall also comply with all safety rules and regulations prescribed by Purchaser for any of its plants in which the Work is to be performed.

13. PATENTS, TRADE SECRETS, COPYRIGHTS, AND TRADEMARKS

Seller shall indemnify, defend, and hold Purchaser (including its successors in interest) harmless of and from any action against Purchaser based on a claim that the manufacture, sale, Purchaser's intended use, or resale of any of the goods covered by this Purchase Order constitutes infringement of any patent, now or hereafter issued or violates any other proprietary interest (including, but not limited to copyrights, trademarks, and trade secrets). Purchaser shall notify Seller in writing and provide Seller at Seller's expense such authority and assistance as Seller may reasonably request for defense of same. In the event Purchaser is enjoined from use and/or resale of any of the goods covered by this Purchase Order. Seller shall (at its expense) make reasonable effort to procure for Purchaser the right to use and/or resell said goods. If Seller cannot so procure the aforesaid right within a reasonable time, Seller shall promptly (at Seller's expense): (a) modify said goods so as to avoid infringement of any patent or other proprietary interest, or (b) replace said goods with goods which do not infringe or violate said proprietary interest and reimburse Purchaser for any additional transportation and reinstallation costs incurred by Purchaser, or (c) remove said goods and refund any compensation theretofore paid to Seller and pay to Purchaser any transportation costs that may have been paid or incurred by Purchaser in connection with the goods so removed.

14. CONFIDENTIAL INFORMATION

All plans, drawings, specifications, and other information given to Seller in connection with this Purchase Order involve valuable property rights of Purchaser and shall be held confidential by Seller, shall remain the property of Purchaser, and shall not be used by

Seller for any purposes other than those for which they have been prepared or supplied. Upon completion of this Purchase Order, Seller shall return all such documents to Purchaser. Seller agrees not to use for publicity purposes any photographs, drawings, and/or materials in connection with the performance of this Purchase Order without obtaining the prior written consent of Purchaser; and upon completion of this Purchase Order. Seller shall return all materials given Seller as aforesaid.

15. CAMERAS—PHOTOGRAPHS

In the absence of the prior written permission from an authorized agent of Purchaser, Seller shall not bring any cameras onto the premises of Purchaser and shall not take, or have taken, or otherwise acquire photographs, sketches, or any other likenesses of any kind of said premises, including likenesses of plans, drawings, specifications, or other subject matter relating to this Purchase Order. In the event that Purchaser does authorize Seller to take, or have taken, or otherwise obtain any such photographs or likenesses, the receipt and use thereof will subject to such terms and conditions as purchaser may deem appropriate at that time.

16. TRANSPORTATION COSTS

Seller warrants that any transportation costs included in the price will not exceed actual transportation costs paid by Seller. If this Purchase Order calls for payment of any transportation costs by Purchaser, Purchaser shall in no event be liable or accountable for any amount in excess of the actual costs of transportation. Seller shall be accountable for and pay any excess transportation costs arising from Seller's failure to make delivery to the F.O.B. Point or to follow shipping instructions furnished by Purchaser.

17. PARTS, ORIGINAL SOURCE, AND SUPPLY

Seller shall not remove, deface, or in any manner render illegible the original manufacturer's name, identity, part number, or any other data from any parts, components, pieces, or systems. Maintenance manuals, operating manuals, and parts lists shall identify parts, components, pieces, and systems by original manufacturer's name and part number.

18. TAXES

Seller's prices shall be exclusive of any governmental impost or duty and of any federal, state, or local sales, use, or excise taxes levied upon, or measured by, the sale, the sales prices, or use of goods required in the performance of this Purchase Order. Seller shall list separately in its pricing quotation and on its invoice any such impost, duty, or tax lawfully applicable to any such goods payable by Purchaser with respect to which Purchaser does not furnish Seller lawful evidence of exemption. Any such imposts, duties, or taxes not so separately stated shall not be reimbursable to Seller or otherwise payable by Purchaser. Seller agrees to comply with any reasonable request by Purchaser regarding payments under protest, and regarding any refunds, claims, litigation, or proceedings with respect to any such imposts, duties, or taxes. With the exception of the foregoing specified imposts, duties and taxes, Seller's price shall be deemed to include all other federal, state, local, and other governmental taxes, imposts, and duties.

19. DRAWBACKS

Seller shall obtain and pay over to Purchaser all drawbacks and substitutions for drawbacks applicable to goods sold for export hereunder which Seller is entitled to claim under the Tariff Act of 1930 (19USCA 1313), as amended, to date of such export and under applicable U.S. Treasury Department Regulations effective on the date of such export.

20. SELLER'S INVOICES

Purchaser will not be responsible for delay in receipt of Seller's invoices and required supporting documents. Should delay occur, time allowed by the Seller for payment of invoices or for accepting a cash discount offered shall commence on the date invoices, complete with any required supporting documents, are properly received by Purchaser.

21. TELEGRAMS

Neither party shall be responsible for any errors or mutilation in cables or their translation or interpretation or any losses or damages caused thereby.

22. SELLER'S CERTIFICATE

Seller shall furnish to Purchaser such certificates and other information as may be reasonably required by Purchaser's financing agencies.

23. NON-WAIVER

Failure of Purchaser to insist upon strict performance of any terms or conditions shall not be deemed a waiver of any rights or remedies that it may have and shall not be deemed a waiver of any subsequent default of the same terms and conditions. The shipping or receiving of any goods under this Purchase Order shall not be deemed a waiver of any rights regarding any prior failure by Seller to comply with any of the provisions of this Purchase Order.

24. ENTIRE CONTRACT

This Purchase Order, together with any written documents which may be incorporated by specific reference, constitutes the entire agreement between the parties.

25. NONASSIGNMENT

This Purchase Order or the monies due hereunder shall not be assigned in whole or in part without Purchaser's prior written consent.

26. WEST VIRGINIA LAW

The laws of the State of West Virginia shall govern the validity, interpretation, and enforcement hereof.

27. PRECEDENCE OF DOCUMENTS

In the event of any conflict between these Terms and Conditions and the Specifications and Drawings, these Terms and Conditions shall prevail. In the event of any conflict between the Specifications and Drawings, the Specifications shall prevail.

28. CAPTIONS

The captions in this Purchase Order and any written documents incorporated by reference are intended for convenience only and shall not be construed in the interpretation hereof.