

PURCHASE ORDER TERMS AND CONDITIONS

1. **Acceptance of Purchase Order.** Agreement by Seller to furnish the materials and/or services hereby ordered, or its furnishing such materials in whole or in part, shall constitute acceptance by the Seller of this purchase order subject to these terms and conditions. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions of purchase herein contained shall be void and of no effect unless specifically agreed to by Buyer in writing. These terms and conditions, together with such modifications and with such data relating to price and delivery as are accepted in writing by Buyer, constitute the entire agreement between the parties and supersede all prior written or oral negotiations, representations and agreements with respect hereto.
2. **Delivery; Notice of Delay.** (a) Time is and shall remain of the essence for this purchase order, and no acts of Buyer, including without limitation modifications of this purchase order or acceptance of late deliveries, shall constitute waiver of this provision. Buyer also reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Buyer's orders or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates. (b) Seller shall notify Buyer in writing immediately of any actual or potential delay or threat to delay the timely performance of this purchase order. (c) Any cash discount and payment period shall commence with receipt of valid invoice or of goods at the specified delivery point, whichever is later.
3. **Prices, Taxes and Set-Off.** (a) Buyer shall not be billed at prices higher than those stated in this purchase order. Unless otherwise specified, the price stated includes all charges for packing, hauling, storage and transportation. Seller will pay all delivery charges in excess of any delivery charge Buyer has agreed to pay. (b) The price stated includes all taxes except state or local sales or use taxes or similar taxes which Seller is required by law to collect from Buyer, including Value Added Taxes, where applicable. Such taxes, if any, shall be separately stated in Seller's invoice and paid by Buyer unless an exemption is available. (c) Payment of invoice shall not constitute acceptance and shall be subject to adjustment for errors, shortages, defects in the goods or services or other failure of Seller to meet the requirements of this purchase order. (d) Buyer may set off any amount due from Seller to Buyer or any division or subsidiary of Buyer, whether or not under this purchase order, against any amount due Seller hereunder.
4. **Changes.** Buyer shall have the right to suspend work or to make changes from time to time in the services to be rendered or the materials to be furnished by Seller hereunder or the delivery date. If any such changes cause an increase or decrease in the cost of performance of this purchase order or in the time required for its performance, Seller shall immediately notify Buyer and an equitable adjustment shall be promptly negotiated and the purchase order shall be modified in writing accordingly.
5. **Cancellation.** (a) Buyer reserves the right to cancel by notice in writing, in whole or in part this purchase order or work under this purchase order in its sole discretion and without cause, or for cause (i) due to breach of any one or more of its terms, or (ii) if Seller fails to make progress as to endanger performance of this purchase order in accordance with its terms, or (iii) if shipments are not made as promised or deliveries are not made within specified time, or (iv) if Seller becomes insolvent, or upon the adjudication of bankruptcy of Seller or the filing of a voluntary or involuntary petition of bankruptcy by Seller or the making of an assignment for the benefit of creditors by Seller. (b) In the event of cancellation for cause, Buyer's liability shall be limited to payment of the purchase order price for completed items finished prior to cancellation and delivered to and accepted by Buyer.
6. **Remedies** (a) The rights of both parties hereunder shall be in addition to their rights at law or in equity. Failure of Buyer to enforce any of its rights shall not constitute a waiver of such right or any other rights. (b) IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR ANY LOSS OF PROFITS, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES, REGARDLESS OF WHETHER BUYER HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.
7. **Warranty on Service.** (a) Seller agrees to warrant the materials delivered or services rendered under this purchase order to be free from defects in workmanship, materials, and design and to be in accordance and conformance with Buyer's specifications, drawings, and descriptions in all respects. Seller further warrants that all materials delivered under this purchase order shall be of merchantable quality, new and unused (unless otherwise specified in this purchase order), and shall be fit and suitable for the purpose intended by Buyer, and that all services shall be performed in accordance with the highest professional standards in Seller's trade or industry. (b) The foregoing warranties shall constitute conditions and are in addition to all other warranties, whether express or implied, and shall survive any delivery, inspection, acceptance or payment by Buyer. Buyer's approval of material or designs furnished by Seller shall not relieve Seller of its obligations under this section. All warranties shall run to Buyer and Buyer's customers. (c) Seller shall be liable for and save Buyer harmless for any loss, damage, or expense whatsoever that Buyer may suffer from breach of any of these warranties. (d) Buyer shall notify Seller promptly of all claims covered by this warranty. Following notification, Seller shall promptly repair or replace the defective work to Buyer's specifications, at Seller's cost. If Seller does not respond to the warranty work within 72 hours from notification from Buyer, Buyer will service warranty work and deduct their cost from the Seller's invoice.
8. **Insurance.** Seller shall maintain;
 - a. Workers Compensation Insurance in compliance with the laws of the State where the operations are located, including Employers Liability Insurance in an amount not less than \$1,000,000;
 - b. Commercial General Liability insurance written on an occurrence form, with defense costs in addition to limits, insuring Bodily Injury and Property Damage, including Product and Completed Operations coverage, Blanket Contractual Coverage, Independent Contractors coverage, Personal Injury and Advertising Injury coverage and XCU (Explosion - Collapse - Underground Hazard Insurance), in an amount not less than \$1,000,000 per occurrence;
 - c. Automobile Liability Insurance on all owned, non-owned, hired or leased automotive equipment used in the performance of the Work in amounts not less than \$1,000,000 for bodily injury and property damage;
 - d. Any insurance policy listed above must include;
 - a. A waiver of the insurers' rights of subrogation against Simon Roofing & Sheet Metal Corp.;
 - b. Simon Roofing & Sheet Metal Corp. shall be named as additional insured for loss arising from Seller's operations and completed operations;
 - c. Such policies shall be primary coverage for all claims of whatever type and nature;
 - e. Provide shall provide proof of said coverage to Buyer within ten (10) days following the date hereof.
9. **General Indemnity.** Seller agrees to indemnify, defend and hold harmless Buyer and its subsidiaries, divisions, officers, directors, stockholders, employees, representatives, agents, assigns and successors, from any and all claims, demands, suits, damages, expenses, or causes of action in law or in equity, and the costs thereof (including reasonable attorney's fees) which results in injury or death to persons or property, for liability of any nature on account of any damage to property or injury or death of persons, or from fines, penalties or civil damages levied by any federal, state, or local agencies or entities, related to or arising out of Seller's work or duties hereunder, or out of any negligent act or omission of Seller, or because of Seller's breach of these terms and conditions, or breach of any warranty, expressed or implied.
10. **Licensure.** Seller is responsible for complying with state and local licensure requirements for obtaining permits necessary for conducting its work hereunder, and for complying in all respects with state, local, and federal laws applicable to its trade and its work.
11. **Applicable Law.** These terms and conditions shall be governed by the laws of the State of OHIO and is accepted by Buyer at its Corporate Office in Boardman, OH. Buyer's rights granted hereby are cumulative and in addition to any rights it may have at law or equity.