ACCEPTANCE

1. This order is Buyer’s offer to purchase the goods and/or services from Seller described on the purchase order. Buyer’s placement of this order with Seller is expressly conditioned upon Seller’s acceptance of all the terms and conditions of purchase contained on or attached to this order including, if any, detailed specifications or drawings and the appendices referred to in paragraphs O and P herein, if applicable.

2. Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing by Buyer’s Purchasing department and no such additional or different terms or conditions in any printed form of Seller shall become part of this contract despite Buyer’s acceptance of goods or services, unless such acceptance specifically recognizes and assents to the inclusion.

3. Any objection by Seller to the terms and conditions hereof shall be ineffective unless Buyer is advised in writing thereof within ten (10) days of the date of the order.

SHIPPING INSTRUCTIONS
All goods are to be shipped freight prepaid, F.O.B. destination, unless otherwise stated. Where Buyer has so authorized in writing, goods may be shipped F.O.B. shipping point, but Seller shall prepay all shipping charges, route the goods by the cheapest common carrier, or the carrier specified, and list said charges as a separate item on Seller’s invoice. Each invoice for shipping charges shall be accompanied by the original or a copy of the bill indicating that such charges have been paid. Buyer reserves the right to reject C.O.D. shipments. Seller shall not insure the goods for Buyer’s account during shipment except upon Buyer’s written request or where the shipping mode is parcel post.

DELIVERY
Time is of the essence and this order may be terminated if delivery is not made or services are not performed by the date specified on the purchase order. No change in the scheduled delivery date or performance will be permitted without Buyer’s prior written consent. No acceptance of goods or services after the scheduled delivery date will waive Buyer’s rights with respect to such late delivery nor shall it be deemed a waiver of future compliance with the terms hereof.

INSTRUCTION
Except as to items purchased from stock, items supplied hereunder and materials and components incorporated therein shall be subject to inspection at Buyer’s option, by Buyer or his designee during and after manufacture. Items purchased from stock shall be subject to inspection before final acceptance. Neither inspection nor failure to inspect shall relieve Seller of responsibility with respect to items supplied hereunder or imply acceptance thereof.

RISK OF LOSS
Regardless of F.O.B. point, Seller agrees to bear all risk of loss, injury or destruction of goods and materials ordered herein which occur prior to acceptance by Buyer. No such loss, injury or destruction shall release Seller from any obligations hereunder.

CHANGES
Buyer shall have the right from time to time by written notice, without notice to Seller’s sureties, to make changes in or additions to the instructions, drawings or specifications for the items to be supplied under this order and Seller agrees to comply with such change notices which shall become part of the contract. If such changes cause an increase or decrease in the cost of or time required for performance, an equitable adjustment in the price and delivery schedule shall be made. Seller shall not make any changes in the materials or processing methods without prior notification to and approval by the Buyer and submission and approval of samples if required by the Buyer.

WARRANTY
Seller warrants to Buyer and its Customer that each item furnished hereunder and any component part thereof, will be in conformity with the specifications in all respects, new, unless otherwise specified, of the best quality of its respective kind free from faulty workmanship materials or design (except to the extent furnished by Buyer or its Customer) and if of Seller’s design, sufficient to fulfill any operating conditions specified by Buyer or its Customer. Seller shall replace or repair any item or component part thereof found not to be in conformity with the preceding paragraph provided Buyer notified Seller of such nonconformity. In the event Seller fails to proceed diligently to so replace or repair within a reasonable time after receipt of such notice, Buyer may undertake or complete such replacement or repair for Seller’s account.

The foregoing express warranties shall be in addition to any warranty customarily made by Seller of its products. The warranties represented shall survive the delivery of goods or completion of work or services provided and be fully enforceable thereafter.

PRICES
If price is not stated on this order, it is agreed that the goods or services shall be billed at the price last quoted, or paid by Buyer, the prevailing market price or any applicable ceiling price established by the office of price stabilization or other government agency, whichever is lower.

CASH DISCOUNT
If Buyer is entitled to a cash discount, the period of computation thereof will commence on the date of acceptance or receipt of a correctly completed invoice, whichever is later. If a cash discount is made part of the contract, but the invoice does not reflect the existence thereof, Buyer is entitled to a cash discount with the period commencing on the date Buyer determines that a cash discount applies.

ASSIGNMENT AND SUBCONTRACTING
Neither this order nor any rights, obligations or monies due hereunder are assignable or transferable (as security for advances or otherwise) without Buyer’s prior written consent. Seller shall not subcontract any portion of the work encompassed by this order nor be required to recognize any subcontract without prior written consent.

LIENS, CLAIMS AND ENCUMBRANCES
Seller warrants and represents that all the goods will, when delivered hereunder, be free and clear of all liens, claims or encumbrances of every kind. Buyer may withhold payment pending receipt of evidence in form and substance satisfactory to it of the absence of such liens, claims and encumbrances.

TERMINATION
Default: Buyer may terminate this order or any part thereof by written notice if Seller fails to make deliveries or complete performance of service within the time specified or in accordance with agreed schedules (unless such failure be due to acts of God, strike or any other causes beyond Seller’s control), if Seller fails to comply with the terms and conditions of this order and does not cure such failure within a period of ten (10) days after written notice thereof, or if Seller makes an assignment for the benefit of creditors, becomes insolvent or subject to proceedings under any law relating to bankruptcy, insolvency, or the relief of debtors. Should Buyer elect to terminate default in accord with this paragraph, Buyer may take possession of all or any of the items to be supplied hereunder in Seller’s possession without regard to stage of completion and may complete such items for Seller’s account, or may manufacture or procure items similar to those to be supplied hereunder and charge any excess cost of expense occasioned thereby to Seller’s account. In all events, Buyer shall not be or become liable to Seller or anyone claiming through or under Seller for any portion of the cost or price of any items Buyer elects not to accept following notice of termination.

Buyer’s convenience: Buyer may terminate this order for its convenience in whole or part by written notice to Seller. In the event of such termination, Seller may claim its reasonable costs incurred prior to the effective date of termination plus a reasonable allowance for profit, all to be determined in accordance with generally accepted accounting procedures, provided, however, that the total sum payable upon termination shall not exceed the order price reduced by payments previously made. If it appears that Seller would have sustained a loss on the entire order had it been completed, no profit shall be allowed. As to partially completed work or raw material included in Seller’s costs, Seller shall hold the same for disposition in accordance with Buyer’s instructions.

The rights and remedies of the Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

The failure of Buyer to insist upon strict performance of any of the terms of this order or to exercise any rights hereunder shall not be construed as a waiver of Buyer’s rights.
M. **PATENT INDEMNITY** As to any item, the design for which is not supplied by Buyer or its Customer, Seller shall defend any action brought against Buyer or its Customer, based upon a claim that such item infringes any patent and shall pay damages, cost and expense including attorney’s fees in connection therewith if use of any such item is enjoined. Seller shall at its expense, either procure the right to continue the use of said item, modify it so it becomes non-conforming or remove said item and refund the purchase price and cost of transportation and installation thereof.

N. **PROPRIETARY RIGHTS** If the items to be supplied hereunder have been designed in accordance with specifications or data furnished or originated by Buyer or its Customer, such items shall not be reproduced except with the approval of Buyer or its Customer and all drawings, photographs, data and other written material or information supplied in connection therewith shall at all times remain the property of Buyer or its Customer and be returned promptly upon written request.

O. **U.S. GOVERNMENT FUNDING** When the items identified hereunder are acquired with Federal funds or are used in the performance of a U.S. Government contract or subcontract, supplementary terms and conditions set forth in Appendix A shall apply, whether or not Appendix A is attached hereto. (Copies furnished upon request).

P. **SERVICE OR INSTALLATION OF WORK** In the event this order requires the performance of work or installation of goods by Seller upon any property or project of Buyer, the conditions set forth in Appendix B shall apply whether or not Appendix B is attached hereto. (Copies furnished upon request).

Q. **EQUAL OPPORTUNITY CLAUSE** Seller agrees to adhere to the nondiscrimination clauses contained in Section 202 Executive Order 11246, as amended by Executive Order 11375 relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, handicap or veteran’s status and the implementing rules and regulations prescribed by the Secretary of Labor, unless exempted. The Executive Order 13201 Employee Notice Clause set forth in 29 Code of Federal Regulations Chapter 470 is hereby incorporated by reference. The Executive Order 13496 Employee Notice Clause set forth in 29 CFR Part 471, Appendix A to Subpart A is hereby incorporated by reference. **The Equal Opportunity Clause set forth in 41 CFR 60-1.4(a) is hereby incorporated by reference.**

R. **ATTORNEY’S FEES** In any suit or action brought to enforce any term, condition or covenant herein, or to recover damages arising from any breach of this contract, the losing party shall pay to the prevailing party reasonable attorney’s fees and all other costs and expenses which may be incurred by the prevailing party in any such suit or action and in any reviews thereof and appeals therefrom.

T. **LAW** The laws of the State of New York shall govern this order and the venue of any action brought hereunder may be laid in or transferred to the County of Nassau, State of New York.

U. **INTENDED USE** Unless otherwise stated, the goods ordered are to have an intended usage in the manufacture, construction, modification, maintenance, repair and/or servicing of the Buyer’s products and facilities. “**ALL MATERIAL OR EQUIPMENT MUST CONFORM TO THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1971 AND ANY AMENDMENTS THERETO.**”

V. **NON-DISCRIMINATION AND AFFIRMATIVE ACTION POLICY**

1. Seller represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:

   a) Seller shall (I) not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize M/WBEs, Minority Group Members and women in its workforce on contracts. Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

   b) At the request of the Affirmative Action Officer (AAO), Seller shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Buyer’s obligations herein.

2. Seller will make every attempt to include minorities and women in any job opportunities created by the project which is the source of this Agreement; and to solicit and utilize M/WBE firms for any contractual opportunities generated in connection with this project.

3. Seller represents and warrants that, for the duration of this Agreement, it shall furnish all information and reports required by the AAO and shall permit access to its books and records by the Dormitory Authority of the State of New York, or its designee, for the purpose of ascertaining compliance with provisions hereof.

Revised 1/20/2017