



NABHOLZ

PURCHASE ORDER

P.O. Number: Job # + P + Cost Code
Cost Code: Code Code

TO: Vendor Name
Address
City, State Zip

DATE: Date

PROJECT NAME: Name & Location of Project

SHIP TO: Jobsite Address
City, State Zip

BILL TO: Nabholz Office Address
City, State Zip

DELIVERY DATE REQUIRED: Delivery date required

Coordinate all deliveries
 with Project Superintendent: **Superintendent**

PHONE: Jobsite Phone #
PAGER: Superintendent's Pager #

Specification Section : Specification Section & Title

Furnish the following materials delivered to the job site in strict accordance to plans and specifications prepared by **Architect** for **Name of project** dated **Date of plans and specifications**.

Description of materials

NET AMOUNT:	\$0.00
TAX:	\$0.00
TOTAL AMOUNT:	\$ 0.00

Vendor agrees to comply with the following:

- Submit six (6) copies of all required shop drawings, samples, product data and other submittal data within # of days days of this purchase order date.
- Furnish Material Safety Data Sheets on any material that may require hazard information.
- Materials provided under this order shall be billed on one invoice per month only. Multiple monthly billings *will not* be accepted. Purchase Order number and cost code must be clearly noted on all invoices.
- Sales taxes and freight costs are included in this order.
- Purchase Order Terms and Conditions, Attachment A, are made a part of this agreement as though fully set forth herein and are accepted by Contractor and Vendor.
- For POs issued under U.S. government contracts, grants, and projects receiving federal assistance as provided by federal law, executive order, or regulation, (i) Attachment B, www.nabholz.com/suppliers/po-attachment-b.pdf, shall apply as though fully set forth herein, and (ii) Attachment C, Debarment Certification form must be signed and returned <https://docs.nabholz.com/suppliers/PO-Attachment-C.pdf>.

Nabholz Construction Corporation
 Operations Group:

Contracted By:

Project Manager's Name	Date	Vendor Signature	Date
Project Manager			

***** PLEASE SIGN AND RETURN COPY TO NABHOLZ CONSTRUCTION CORPORATION. *****

Attachment 'A'
PURCHASE ORDER TERMS AND CONDITIONS

1. These Purchase Order Terms and Conditions (“Terms and Conditions”), and the Purchase Order, with any and all appendices, and/or exhibits attached hereto or otherwise issued by Nabholz Construction Corporation (“Contractor”) herewith, (collectively, the “Purchase Order” or “PO”) by and between Contractor and Vendor (Contractor and Vendor, collectively, the “Parties,” each a “Party”), constitute the entire agreement between Contractor and Vendor and supersede and replace any and all prior discussions and agreements between the Parties. If any discrepancy, difference or conflict exists between the various provisions of the PO and these Terms and Conditions, these Terms and Conditions shall govern unless specifically referenced in the Purchase Order as modified by the parties. Capitalized terms used but not defined herein shall have the meanings ascribed in the PO. **Contractor hereby gives notice of its objection to any different or additional terms other than those terms and conditions set forth herein. Vendor performance or partial performance in any degree or order shall conclusively constitute acceptance of the PO.** Vendor agrees to be bound by the terms of the contract between the Owner¹ and the Contractor, the general conditions, special conditions, the plans, drawings and specifications (“Contract Documents”) as far as applicable to this PO, and Vendor assumes toward Contractor all the obligations and responsibilities that Contractor, by the Contract Documents, assumes toward the Owner insofar as they are applicable to the materials to be furnished under this PO.
2. Changes. Contractor may make changes to the PO at any time, and Vendor shall accept such changes. Any changes to the Goods (as defined hereafter) shall be negotiated in advance by the Parties and agreed to in writing. If a change causes an increase or decrease in cost and/or time required for performance of the PO, an equitable adjustment shall be made and the PO shall be modified accordingly. If price, terms, shipping date or any other express condition of the PO cannot be achieved or met by Vendor, Contractor must be notified and accept in writing any variation prior to shipment or delivery.
3. Prices. Prices for conforming goods, items, materials or services specified in the PO (collectively, the “Goods”) shall include any applicable transportation charges, insurance costs, shipping and handling fees, and taxes.
4. Payment and Title. Upon Acceptance (as defined hereafter) of the Goods pursuant to Section 9 herein, Contractor agrees to pay all amounts properly due within forty-five (45) days of receipt of Vendor’s invoice, less any deposits paid to Vendor (if any) unless otherwise agreed by the Parties in the PO; provided, however, Vendor shall invoice Contractor, and Contractor shall only be obligated to pay such invoice upon Delivery and Acceptance of all Goods ordered under the PO. Vendor shall promptly pay its lower tier vendors or subcontractors when due for all labor, equipment, materials and supplies used or consumed in completing PO. Contractor may elect to withhold retention of up to five percent (5%). Vendor shall indemnify Contractor for all premiums, costs, fees, including attorneys’ fees, incurred by Contractor to remove liens or levies filed or threatened against the Project resulting from Vendor’s failure to pay obligations related to the Goods.
5. Delivery of Goods. Vendor hereby agrees to on-time delivery based upon the timeline set forth in the PO. If the PO does not specify a delivery date (“Delivery date”) or schedule, Vendor shall provide the Goods as if time is of the essence. Changes, modifications or any delay resulting from Contractor that prevents Vendor from achieving the Delivery Date shall not constitute a breach of this PO by Vendor. If Vendor anticipates a delay in the delivery of Goods, Vendor shall immediately notify Contractor. In the event Vendor fails to deliver the Goods by the Delivery Date, or Vendor fails to deliver conforming Goods, Contractor may purchase substitute Goods elsewhere and charge Vendor for any reasonable and documented additional expense incurred relating to the purchase of such substitute Goods. Vendor shall deliver all Goods in accordance with the terms of the PO and as provided in the plans, specifications, shop drawings/submittals. If delivery of the Goods is not complete by the Delivery Date, Contractor may, without liability and in addition to its other rights and remedies, terminate the PO by notice deemed effective 3 calendar days from issuance or upon receipt by Vendor, whichever occurs first, as to Goods not yet delivered. Acceptance (as defined hereafter) of any part of the PO shall not bind Contractor to Accept any future shipments nor deprive it of the right to return Goods already Accepted. Contractor reserves the right to cancel PO or any part thereof, and receive refund of any payments made provided delivery is not made within time specified.
6. Shipping. Vendor shall substantially pack, mark and ship all Goods in a manner to secure the lowest, reasonable transportation cost without compromising security and integrity of Goods, and in accordance with any shipping instructions contained in the PO and the requirements of common carriers. Vendor shall be liable for any difference in shipping charges and actual damages arising from its failure to follow the shipping instructions contained in the PO or industry standard shipping practices. The Parties agree to assist each other in prosecution of claims against carriers.
7. Acceptance. As a condition precedent to payment for Goods by Contractor to Vendor, Contractor must Accept Goods (in whole or in part) on the Delivery Date or as otherwise set forth in the PO. For the purpose of these Terms and Conditions, “Acceptance” means the point at which Contractor accepts or is deemed to accept the Goods in accordance with the terms set forth in the PO. Acceptance shall include the terms “Accept” and “Accepted.” The Goods shall be deemed to have been Accepted (i) in the absence of written notification of non-Acceptance by Contractor to Vendor within a reasonable period of time, or (ii) upon timely delivery of the Goods identified herein to the shipping address specified on the face of the PO and examination and confirmation that Goods conform to their applicable specifications. Prior to Acceptance, title to Goods remains with Vendor, all risks of damage, injury, or loss thereto, or partial or complete destruction thereof, will be borne and assumed by Vendor. By way of clarification, Contractor retains the right to reject non-conforming Goods and shall not be obligated to Accept any non-conforming Goods.
8. Inspection. Payment for the Goods provided under the PO shall not constitute Acceptance thereof. Contractor may inspect and test such Goods and reject any or all items that are, in Contractor’s sole and reasonable judgment, non-conforming. Goods rejected or supplies in excess of quantities ordered may be returned to Vendor at its expense. Failure by Contractor to inspect and/or test Goods shall not be deemed Acceptance by Contractor.
9. Warranty. In addition to Vendor’s standard warranty relating to the Goods, Vendor warrants that the Goods to be delivered pursuant to the PO (i) are merchantable, of good material and workmanship, free from defects not inherent in the kind specified, conforming to any prototype or samples previously furnished, (ii) conform to all specifications or other descriptions furnished to and approved by the Parties, (iii) comply with all applicable international, federal, state and local laws, rules and regulations (including, without limitation, those concerning health, safety, and environmental standards) which bear upon Vendor’s performance, (iv) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by Contractor, and (v) are not restricted in any way by any patents, copyrights, mask work, trademark, trade secrets, or intellectual property, proprietary or contractual right of any third party. Terms and conditions of Attachment B are made a part of this agreement as though fully here set forth and are accepted by Contractor and Vendor. **Attachment B,**

¹ The term “Owner” may also refer to Nabholz’ client. For exemplary purposes only, “Owner” may refer to the Project General Contractor when Nabholz contracts directly with the General Contractor as a lower-tier subcontractor.

- www.nabholz.com/suppliers/po-attachment-b.pdf applies to POs issued under U.S. Government contracts, grants, and projects receiving federal assistance as defined by federal law, executive order, or regulation.
10. In addition, Vendor warrants that Contractor shall have good and marketable title to all Goods (including components thereof) purchased pursuant to transactions contemplated by this PO, free of all liens and encumbrances and that no licenses are required for contractor to use such Goods. This Section 9 shall not be waived by reason of Acceptance of the Goods or payment therefor by Contractor.
 11. **Cancellation.** Contractor may, for any reason and at any time, at its option cancel any unshipped Goods. To the extent the PO covers stock Goods, Contractors' only obligation is to pay for Accepted Products prior to such cancellation. To the extent the PO covers Goods specially manufactured or fabricated to Contractor's specifications, Vendor shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Vendor is not in default, Contractor shall reimburse Vendor for the actual, direct cost to Vendor of such Goods which have, at time of such cancellation, been wholly or partially manufactured. Upon payment, title to all such Goods shall pass to Contractor.
 12. **Risk of Loss.** Vendor assumes all risk of loss of or damage to all Goods ordered and all work in progress, materials, and other items related to the PO until the same are finally Accepted by Contractor. Vendor assumes all risk of loss of or damage related to any Goods, work in progress, materials, and other items rejected by Contractor until the same are received by Vendor or otherwise Accepted by Contractor.
 13. **Insurance.** Vendor agrees to maintain Workmen's Compensation, Commercial General Liability, public liability and such other insurance in a minimum of \$1 Million per occurrence or such amounts as may be required of the Contractor in the PO, and to name Contractor and Owner as Additional Insureds. Vendor shall provide Contractor with certificates of insurance and copies of such policies if requested, and shall maintain such insurance while Vendor is engaged under this PO. If design responsibilities are provided by Vendor, Vendor shall maintain professional liability coverage in a minimum of \$1 Million per claim with "tail" coverage of no less than one (1) year from PO completion.
 14. **Confidentiality.** Vendor agrees to treat all drawings, specifications and other information furnished by Contractor in connection with this PO as confidential. Materials made or supplied in accordance with drawings or specifications applicable to the Goods ordered hereunder shall not be supplied to anyone other than Contractor without Contractor's prior written permission.
 15. **Indemnification.** **To the fullest extent permitted by law, defend, hold harmless and indemnify Contractor, its employees, agents, officers, subsidiaries and affiliates, and representatives (each an "Indemnitee," and collectively, the "Indemnitees"), from and against any and all claims, liabilities, losses, damages, lawsuits, actions, proceedings, arbitrations, taxes, penalties, or interest, associated auditing and legal expenses, and other costs incurred by Indemnitee(s) (including reasonable attorneys' fees and costs of suit) ("Indemnified Claims") arising from Vendor's: (a) performance of its obligations under the PO, (b) misrepresentation or breach of any representation, warranty, obligation, or covenant of the PO, and (c) damage to property and injuries to or death of any person or persons which may be asserted against Contractor or its customer, its employees, agents, officers and representatives, or its property arising out of any acts or omissions of or goods and services supplied by Vendor, its agents, employees, sub-contractors of any tier, or anyone acting under. Such Indemnified Claims shall include, without limitation, all direct, actual, special, and consequential damages.** Notwithstanding, Vendor's obligations under this Section 14 do not include claims, liabilities, losses, damages, lawsuits, actions, proceedings, arbitrations, taxes, penalties, or interest, associated auditing and legal expenses, and other costs incurred by Indemnitee(s) to the extent arising from Contractor's negligent actions, alteration or misuse of the Goods provided by Vendor. This Section 14 shall survive termination, cancellation, or expiration of the PO.
 16. **Independent Contractor.** Vendor, in the performance of its duties hereunder, shall be an independent contractor only, and not an agent, employee, partner or joint venture of, or with Contractor, and nothing herein shall be deemed to create or imply any relationship other than that of independent contractor.
 17. **Non-waiver.** Except as otherwise provided in the PO, failure by either Party to insist on strict performance of any provision of the PO, complain of any action, inaction, or default of the Other Party, or to exercise any right or privilege, shall not constitute a waiver of any aggrieved Party's rights hereunder.
 18. **Severability.** If any term, covenant, condition, or provision of the PO, or the application thereof to any person or circumstance, shall ever be held to be invalid, illegal or unenforceable by a court or judicial officer, the provision shall remain in effect and enforceable to the maximum extent allowed by law.
 19. **Successors and Assigns; Assignment.** PO shall not be assigned, transferred, or delegated by Vendor without the prior written consent of Contractor. Contractor has the right, without any limitation, to assign this PO with Vendor to Contractor's customer.
 20. **Cover.** Should Vendor provide defective or nonconforming material or fail to supply within the time stated, any or all of the material covered by PO, or otherwise breach PO, Contractor shall have the right without further notice to supply itself in the open market to the extent of the deficiency and to hold Vendor liable for any loss occasioned by it. If the material is to be delivered periodically or in installments, failure to deliver any one installment within the time provided shall authorize Contractor to refuse to accept the overdue and/or any subsequent installments or to pay for the same, and it shall have the right to purchase the overdue installment and any or all subsequent installments in the open market without notice and to hold Vendor liable for any loss occasioned by the overdue installment.
 21. **Governing Law.** The PO shall be governed by and construed in accordance with the laws of the State of Arkansas without regard to its rules of conflict of laws. Each of the Parties hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Arkansas and of the United States of America located in Arkansas ("Courts") for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in such courts), waives any objection to the laying of venue of any such litigation in the Courts and agrees not to plead or claim in any Court that such litigation brought therein has been brought in an inconvenient forum.
 22. **Remedies Cumulative.** By exercising any remedy available to Contractor under the terms of PO, Contractor does not waive any other remedies in law or equity available to Contractor.
 23. **Force Majeure.** Contractor may delay delivery, performance, or Acceptance of Goods ordered hereunder in the event of causes beyond its control. Vendor shall hold such Goods or refrain from furnishing such services at the direction of Contractor, and Vendor shall deliver the Goods when the cause effecting the delay is eliminated. Contractor shall be responsible only for Vendor's reasonable, documented and direct additional costs incurred by holding the Goods or delaying performance of the services at Contractor's request. Causes beyond Contractor's control shall include, without limitation, government action or failure to act where required, strike or other labor trouble, fire or similar catastrophe, and severe weather or other acts of God.