

GEM INC. MASTER TERMS AND CONDITIONS FOR PURCHASE CONTRACTS for MATERIALS

- 1) **General.** Vendor hereby agrees to be bound by the following terms and conditions (the “**Agreement**”), which Agreement is incorporated into the purchase contract issued by Buyer to Vendor to which this Agreement applies (the “**Purchase Contract**”). The Purchase Contract supersedes all prior agreements, orders, quotations, proposals and other communications regarding the Materials covered by the Purchase Contract, except that a signed prior agreement (such as an award letter or Non-Disclosure Agreement) will continue to apply to the extent not directly in conflict with the Purchase Contract. The Purchase Contract does not constitute an acceptance of any offer or proposal made by Vendor. Any reference in the Purchase Contract to any offer or proposal made by Vendor is solely to incorporate the description or specifications of Materials in any prior proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in the Purchase Contract.
- 2) **Parties.** For purposes of this Agreement, “**Buyer**” means GEM Inc. or any affiliate or subsidiary thereof issuing the Purchase Contract; “**Vendor**” means the person or entity named as the subcontractor on the applicable Purchase Contract that is furnishing the Materials; “**Owner**” means the person or entity with which Buyer has entered into a contract relating to the Project and, if such person or entity is not the owner of the Project, shall include the Project owner; “**Project**” means the project identified in the applicable Purchase Contract; and “**Materials**” means the goods, equipment, and materials related to the Project that is the subject matter of the Purchase Contract.
- 3) **Materials.** Vendor shall furnish all Materials in compliance with all applicable Laws (defined below) and in accordance with any standards, delivery dates, or specifications referenced or described in the Purchase Contract, and in conformance with the agreement between Buyer and Owner (the “**Owner/Buyer Agreement**”), available upon request. Any requests for substitution by Vendor must be made within fourteen (14) days of receipt of the Purchase Contract and will be subject to Buyer’s approval, which may be withheld in Buyer’s sole discretion. Vendor shall follow all safety policies in place at the Project site where Materials are to be delivered. All drawing transmittals must be in the number of copies indicated on the face of the Purchase Contract. All transmittals must carry the specification paragraph number of the item(s) being submitted. Initial drawing transmittals must be submitted within two (2) weeks of receipt of drawings by Vendor. All transmittals must be delivered to Buyer’s office. All transmittals prepared by Vendor pursuant to this Agreement shall be the property of Buyer.
- 4) **Payment.** Buyer agrees to pay Vendor for the Materials at the sum set forth in the Purchase Contract, providing such Materials are satisfactory to Buyer and to the Architect-Engineer for the Project identified in the Purchase Contract. Partial payments will be made each month in an amount equal to the value of Materials received, not to exceed the amount paid to Buyer by Owner for the Materials on the last month’s estimate, less any amount of retainage indicated in the Purchase Contract. Said monthly payments will be due and payable to Vendor within ten (10) days after receipt by Buyer of its monthly payments from Owner for Materials furnished by Vendor. Partial payment to Vendor shall not be construed as approval or acceptance of the Material, either by Buyer, Architect-Engineer, or Owner. If final acceptance of Materials can be obtained prior to final acceptance of the entire Project by Owner, all monies due Vendor will be paid within ten (10) days of receipt of the same by Buyer from Owner; otherwise, provided Vendor has submitted a proper invoice with all required documentation and all material terms of the Agreement have been satisfied, Vendor will pay all undisputed amounts in Vendor’s invoice within ten (10) days from receipt of corresponding final payment for the Materials to Buyer from Owner. Vendor understands and agrees that Buyer’s receipt of payment from Owner on account of Vendor’s Materials is an express and absolute condition precedent to Buyer’s obligation to pay Vendor. Vendor hereby assumes the risk of default or nonpayment by Owner for any reason whatsoever, including the risk associated with the creditworthiness of Owner. Vendor agrees to furnish any waivers, warranties, guarantees, affidavits, or any other documents required by Owner or Buyer within ten (10) days of notification of need for the same. If such documents are not furnished within ten (10) days, Buyer may withhold payments currently due until such time as the documents are received. Vendor shall not be entitled to recover interest on late or past due payments. Buyer may deduct from any amount due or to become due Vendor any sums owing by Vendor to Buyer as the result of any breach by Vendor of any provision of the Purchase Contract or any other agreement between Buyer and Vendor, together with an amount sufficient to completely protect Buyer from any and all related losses, damages, or expenses until Vendor has remedied the situation to the satisfaction of Buyer.
- 5) **Shipping.** Unless otherwise specified, all packing and cartage charges, including sales tax (unless Buyer provides Vendor with a certificate of tax exemption), shall be assumed and paid by Vendor. It is understood and agreed that the amounts established as compensation for the Materials furnished under the Purchase Contract are firm for the life of the Purchase Contract and not subject to escalation in any form and may be amended only by properly executed change order signed by both Buyer and Vendor (“**Change Order**”). Discount terms, when applicable, are to be predicated upon the assumption invoices will be received by Buyer within three (3) days from date of shipment, otherwise the discount is to be calculated from the date the invoice is received. There shall be no adjustment to the time for delivery or price to be paid for the Material unless and until Buyer signs a Change Order authorizing such adjustment. Vendor shall be deemed to have conclusively waived any and all rights to payment of additional compensation or adjustment of the time for performance if Vendor fails strictly to comply with the notice provisions of this Section.
- 6) **Deliveries.** Shipments or deliveries shall be made at the time and manner specified. Vendor shall promptly notify Buyer with respect to shipping point, initial carrier, and routing and will ascertain deliveries will be made during working hours. Time and quantities are of the essence under the Purchase Contract. Should any event delay or threaten to delay the timely performance of the Purchase Contract, Vendor shall immediately give notice in writing, including all relevant information, to Buyer. Risk of loss passes from Vendor to Buyer upon final payment unless otherwise set forth in Purchase Contract or Owner/Buyer Agreement. Original Bills of Lading, or shipping information required, shall be promptly forwarded by Vendor on the date of shipment. Items arriving without notice having been advanced will be held until such information is furnished and all demurrage accrued shall be the responsibility of Vendor. Vendor agrees to indemnify Buyer for any damage or injury resulting from Buyer providing courtesy unloading or moving of materials or equipment as requested and directed by Vendor.

- 7) **Warranty.** Vendor represents and warrants that all Materials furnished under the Purchase Contract will (a) conform to specifications, samples and/or instructions issued by Buyer; (b) will be first class quality, free from faults or defect; (c) conform in all respects with all laws, ordinances, codes, rules, and regulations of federal, state, county, and/or municipal governmental entities (including code and fire officials) having jurisdiction over Vendor, the Materials, the Project, and/or the Project site (collectively, “**Laws**”); (d) be merchantable at the time of delivery to Buyer and at the time of use by Owner; and (e) be fit and safe for sale and use by Buyer and Owner for which such items are ordinarily intended and for any particular intended use of which Vendor has actual or constructive knowledge. All warranties set forth herein or in any other part of the Purchase Contract (including warranties incorporated herein by reference), or which Law implies, shall survive any inspection, acceptance, or payment by Buyer. Subject to the foregoing, Vendor warrants all Materials for the longest of: two (2) years from the date Buyer accepts the Materials, the warranty period provided by applicable Law, or the warranty period required by the Owner/Buyer Agreement. Such warranties shall be in addition to and not a limitation on Buyer’s other rights and remedies under this Agreement, at law, or in equity. All special warranties and guarantees or manufacturers’ warranties and guarantees shall be assigned to Owner. If defective Materials are shipped to and rejected by Buyer, the quantities under the Purchase Contract will be reduced unless Buyer otherwise notifies Vendor. Vendor agrees to accept return, at Vendor’s risk and expense at full invoice price plus transportation charges, and to replace defective Materials as Buyer deems necessary; and/or Vendor will reimburse Buyer for all reasonable expenses that result from any rejection or correction of defective Materials.
- 8) **Changes.** Buyer reserves the right, by means of properly executed Change Order, to amend and /or modify the drawings, designs, and/or specifications, delivery or shipping schedules, and quantities ordered. Should any change increase or decrease the cost or time required for performance of the Purchase Contract, an equitable adjustment may be requested by Vendor. If the parties fail to agree upon the equitable adjustment to be made, and the changes were initiated by Owner, the Architect-Engineer’s decisions will be binding on both parties. Otherwise, the matter shall be subject to the dispute resolution procedure set forth herein. Nothing in this Section shall excuse Vendor from complying with any change ordered by Buyer.
- 9) **Insurance.** Vendor shall carry and maintain, at its own cost, the following minimum insurance coverages or as set forth in the Owner/Buyer Agreement: (a) worker’s compensation and employer’s liability insurance to the full extent required by applicable laws; (b) commercial general liability coverage, naming Buyer and Owner as additional insureds, with limits of not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate; (c) business automobile liability insurance covering owned, non-owned and leased vehicles with limits not less than \$1,000,000 combined single limit; and (d) to the extent licensed engineering or licensed design services are required as part of the Materials being provided under the Purchase Contract, professional liability insurance with limits of not less than \$500,000 per claim and \$1,000,000 annual aggregate. Vendor shall maintain such coverages for a period of at least three (3) years after the date of Vendor’s final payment required by the Purchase Contract. The required insurance shall be obtained from carriers acceptable to Buyer. Vendor shall provide Buyer with certificates of insurance evidencing the coverages and amounts set forth in this paragraph (including certificates evidencing annual renewal of such policies). Vendor’s certificate of insurance shall contain a provision that the coverage afforded under policy(ies) will not be canceled without at least thirty (30) days’ prior written notice to Buyer. All policies shall be endorsed to provide a waiver of subrogation in favor of Buyer, its affiliates, and Owner, and such other entities as are required by the Owner/Buyer Agreement. These minimum limits may be increased if required by the Owner/Buyer Agreement.
- 10) **Indemnity.** To the fullest extent not prohibited by Law, Vendor shall indemnify, defend, and hold harmless Buyer, Owner and their respective officers, directors, agents and employees from and against any and all losses, damages, liability, costs, claims, liens, causes of action, suits, fines, judgments, and expenses (including costs of litigation or arbitration, attorneys’ fees, expert and consulting fees) of any nature, kind or description (including without limitation claims for violation or infringement of trademark, patent or tangible property rights relating to the Materials) that arise out of or relate to: (a) Vendor’s performance of the Purchase Contract; (b) bodily injury, sickness, disease, wrongful death or property damage, including loss of use or consequential damages resulting therefrom; (c) any claim, demand, or lien by a vendor, supplier, or agent of Vendor; (d) Vendor’s breach of the Agreement; (e) any wrongful or negligent act, error, or omission of Vendor, anyone directly or indirectly employed by Vendor, or anyone for whose acts or omissions Vendor may be liable; and/or (f) nonconforming Materials. Notwithstanding anything to the contrary contained herein, Buyer, at its option shall have the right to participate in the defense of any claims asserted against it, approve the selection of counsel, and approve the terms of any settlements made in its name or on its behalf.
- 11) **Dispute Resolution.** At the sole option of Contractor, any and all claims, disputes, and other matters in question arising out of or relating to this Agreement or breach thereof shall be decided in mandatory and binding arbitration in Walbridge, Ohio in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The award of the arbitrator(s) shall be final and binding, and the award may be entered as a judgment by any court of competent jurisdiction. This agreement to arbitrate shall be specifically enforceable under the Ohio Arbitration Act, Ohio Rev. Code Ann. § 2711.01 *et seq.* Alternatively, Buyer, in its sole discretion, may require Vendor to submit such claim, dispute or other matter to the dispute resolution procedures set forth in the Owner/Buyer Agreement with respect to the Project, and such claim, dispute or other matter may, as Buyer deems appropriate, be consolidated with other claims involving common questions of law or fact.
- 12) **Confidential Information; Project Information.** Vendor acknowledges that, in the course of this Agreement, it may obtain from Buyer or Owner information that is of a confidential or proprietary nature (“**Confidential Information**”). Vendor shall keep confidential, and not use for any purposes outside of the Purchase Contract, any and all such Confidential Information. Vendor shall be responsible for compliance with this provision by its officers, directors, shareholders, employees, consultants, and subcontractors. Vendor acknowledges that any Project information provided by Buyer is for informational purposes only, and the accuracy and completeness of such information is not warranted by Buyer. Vendor acknowledges and agrees that Vendor shall only be entitled to rely upon such information to the same extent that Buyer is entitled to such reliance under the Owner/Buyer Agreement.

- 13) **Cancellation/Termination.** Buyer shall have the right to cancel or terminate this Purchase Contract, in whole or in part, at its convenience and without cause upon not less than three (3) days' prior written notice to Vendor. Buyer may also terminate the Purchase Contract in whole or in part on written notice to Vendor upon Vendor's breach of any provision hereof, or in the event of any proceedings by or against Vendor, voluntarily or otherwise, in bankruptcy, insolvency, or due to the appointment of a receiver or trustee, or an assignment for the benefit of creditors of the property of Vendor. The Purchase Contract is subject to modification and/or cancellation at the discretion of Buyer in the event of fire, earthquake, flood, strikes, acts of God, and/or any other cause beyond the reasonable control of Buyer. Upon receipt of notice of termination, and unless otherwise directed by Buyer, Vendor will: (a) promptly terminate all work under the Purchase Contract; (b) transfer title and deliver to Buyer the finished Materials, the work in process, and the parts and materials that Vendor reasonably produced or acquired according to quantities ordered by Buyer and that Vendor cannot use in producing goods for itself or for others; (c) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination and ensure the recovery of materials in subcontractors' possession; (d) take actions reasonably necessary to protect property in Vendor's possession in which Buyer has an interest until disposal instruction from Buyer has been received; and (e) cooperate with Buyer's reasonable requests in connection with such termination.
- 14) **Assignment.** Vendor shall not assign or subcontract all or any part of its rights or obligations hereunder without the express prior written consent of Buyer. Vendor shall not assign any amounts due or to become due under the Agreement without the written consent of Buyer. No consent to or acceptance by Buyer of any assignment or subcontract shall relieve Vendor of any of its responsibilities under the Agreement. Vendor agrees to the assignment of the Purchase Contract to the Owner as may be required by the Owner/Buyer Agreement.
- 15) **Entire Agreement.** The Purchase Contract, including this Agreement, constitutes the entire agreement between the parties hereto and supersedes any and all prior or contemporaneous written or oral agreements between the parties with respect to the subject matter hereof. All schedules, attachments or exhibits, if any, referred to in or attached to the Agreement and/or the Purchase Contract are and shall be deemed to be an integral part of the Agreement as if fully set forth herein. No modification of this Agreement will be binding on Buyer unless expressly stated in the Purchase Contract or otherwise agreed in writing by Buyer. The Agreement and the provisions of the Purchase Contract are intended to supplement and complement each other and shall, where possible, be so interpreted. If, however, any provision of this Agreement conflicts with any provision of the Purchase Contract, or if there is a conflict within the Agreement or within the Purchase Contract, the provision imposing the higher quality, greater quantity, or greater duty or obligation on Vendor, or granting greater rights or remedies to Buyer or Owner, shall govern.
- 16) **Miscellaneous.** This Purchase Contract and any and all claims, controversies or disputes arising from or relating to this Agreement, shall be governed by and interpreted in accordance with the laws of the State of Ohio, without regard to its conflict of laws principles. Vendor's status shall be that of an independent contractor and not that of an agent or employee of Buyer. Vendor shall not hold itself out as, nor claim to be acting as, an employee or agent of Buyer. The waiver by Buyer of any breach of any provision of the Agreement shall not be construed as, or constitute, a continuing waiver, or a waiver of any other breach of any provision of the Agreement. No delay or omission on the part of Buyer in exercising any right hereunder shall operate as a waiver of such right or any other right under the Agreement. All rights granted to Buyer hereunder shall be in addition to, and not in lieu of, Buyer's rights arising by operation of law or in equity. The Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.