

Purchase Order Terms and Conditions

ARTICLE 1. Invoicing and Payment

- 1.1 It is understood and agreed that receipt of a State Group ("State") Purchase Order by a Vendor shall constitute acceptance by Vendor of this Purchase Order and of all its terms and conditions. Any objections pertaining to the Purchase Order must be raised by Vendor within five days from receipt of Purchase Order, after which time the Vendor is deemed to have accepted the Purchase Order and these terms and conditions.
- 1.2 All invoices must include reference to the corresponding State Purchase Order number to be considered valid for payment.
- 1.3 All invoices must show line items separately as per Purchase Order and revisions issued. Deviations will result in a delay in payment and may require a revised invoice.
- 1.4 Calculation of time for discounting arising from early payment will begin from the date goods are received or date invoice is received, whichever is later.
- 1.5 For invoices for work performed or material delivered in Canada, mail invoices to:
The State Group
3206 Orlando Drive
Mississauga, ON
L4V 1R5
Attn: Accounts Payable
Or email to: ap.invoicing@stategroup.com

For invoices for work performed or material delivered to the US, mail invoices to:

The State Group Industrial (USA) Limited
13800 N. Hwy 57
Evansville, IN
47725
Attn: Accounts Payable
Or email to: ap.invoicingusa@stategroup.com

- 1.6 All valid invoices will be paid on the last day of the second full month after the date of invoice delivery, or as modified on the face of the Purchase Order. State shall have the right to set off the amount of return credits or other sums owed to State under any agreement between the Vendor and State against any amount owed by State to the Vendor.
- 1.7 Terms Vendor and Subcontractor are both used in this Agreement. By definition, a Vendor will supply goods or services to the project. **Anyone who performs work or services on jobsite will be subject to the additional terms in Articles 11 through 15.**

ARTICLE 2. Warranty

- 2.1 By acceptance of the Purchase Order, Vendor warrants the products identified therein for a period of one year from installation or start up (whichever event shall be later) or **such longer period as may be prescribed by the project's Prime Contract and/or the Purchase Order**. Vendor agrees to correct promptly, at its own expense, defects or deficiencies in the work which appear prior to and during the warranty period and further agrees to correct or pay for damages resulting from the deficiencies.

ARTICLE 3. Patents or Copyrights

- 3.1 Vendor shall pay the royalties and patent license fees required and shall hold State harmless from and against claims, demands, losses, damages, actions, suits or proceedings arising out of Vendor's performance which are attributable to an infringement or an alleged infringement of a patent or invention by Vendor or anyone for whose acts it may be liable.

ARTICLE 4. Delivery and Title

- 4.1 No charge for delivery, crating or packaging will be allowed unless agreed to in writing by State. Unless otherwise agreed to between the parties, all shipments are to be DDP (Delivered Duty Paid Free Domicile), Incoterms 2010.
- 4.2 Vendor shall be liable for all damage to goods, materials or equipment resulting from improper packing, and expenses resulting to State therefrom shall be payable by Vendor on demand. State may deduct such expenses from the amount due Vendor.
- 4.3 Material must be delivered in accordance with the approved delivery schedule. State reserves the right to cancel all or any part of the work covered by this order in the event the Vendor does not make delivery as specified in the schedule. All material provided must be CSA or cUL rated for Canadian sites and UL rated for US sites.
- 4.4 State will not accept title to goods until they arrive at site. All materials delivered by Vendor remain its sole responsibility until delivery is accepted in writing by a State authorized representative at the job site or otherwise.
- 4.5 For disposal and removal services, the Vendor will accept title to goods when they are loaded on to Vendor vehicle. All materials received by Vendor remain its sole responsibility once goods are placed on the Vendor vehicle at the jobsite or otherwise.

ARTICLE 5. Right of Cancellation

- 5.1 State reserves the right to cancel this contract without liability for payment or damages if material supplied by Vendor is not in accordance with the plans, specifications, approved samples or is defective in workmanship or material. No deviation from the plans and specifications shall be allowed unless approved in writing by State. Material not conforming will be removed, returned and reinstalled at Vendor's expense.

ARTICLE 6. Acceptance

- 6.1 Notwithstanding any other term herein, commencement of any work or performance of any services hereunder shall constitute acceptance by Vendor of this Purchase Order and of all its terms and conditions. Any objections pertaining to the order must be raised before acceptance hereof by Vendor.
- 6.2 Upon acceptance of this Purchase Order there shall arise a binding contract between Vendor and State, the terms of which shall be deemed to include the terms and conditions of the Prime Contract with the Owner as they apply to this order. The Vendor acknowledges receipt of a copy of said Prime Contract. The terms and conditions of the Prime Contract shall take precedence over the Purchase Order and these terms and conditions should any disputes arise.
- 6.3 In the event of any conflict between these conditions and those as may be contained in any acknowledgment issued by Vendor, the terms and conditions of the Purchase Order shall prevail.
- 6.4 For projects of \$25,000 or more within the Province of Quebec, all Vendors must comply with the requirements of Revenu Quebec. A valid certificate from Revenu Quebec must be provided prior to the start of work and upon submission of final invoice.
- 6.5 Where applicable, Vendor is to provide electronic copies of shop drawings for approval within 10 business days unless otherwise specified in the prime contract, Purchase Order or quotation. Vendor shall not proceed with order until these drawings are approved in writing by State. Please provide six copies of maintenance and operations manuals with the completed order. Vendor shall comply with full plans, specifications, addenda and the Prime Contract.

ARTICLE 7. Calibration

- 7.1 Vendors of inspection, measuring and test services shall provide evidence that equipment being used has been calibrated to standards traceable to national / international standards.

ARTICLE 8. Contract Terms

- 8.1 The Vendor acknowledges that it has reviewed and accepted all contract documents relating to the project which are relevant to the materials or work and services to be provided including drawings, specifications, instructions, tender documents, general conditions, contract and subcontract conditions, all of which are available for viewing at the offices of the Purchaser.
- 8.2 This contract and the terms and conditions incorporated by reference herein contain the entire agreement of the parties.
- 8.3 If any portion of this agreement is determined to be invalid or unenforceable, the remainder of this agreement will remain in effect.

Article 9. Dispute Resolution

- 9.1 Vendor agrees that this agreement will be governed by the laws in the Province or State in which the work is performed, or the materials are delivered.
- 9.2 The costs associated with the enforcement of any portion of this Purchase Order will be payable to the prevailing party at the other party's expense.
- 9.3 If any dispute or controversy occurs between the Parties relating to the interpretation or implementation of any of the provisions of this Agreement, the dispute will be resolved by arbitration. Any Party may serve notice of its desire to refer a dispute to arbitration. The arbitration shall be conducted by a single arbitrator, and the arbitration shall be held within 90 days of the date notice to arbitrate was given. The arbitration shall be held in the largest city in the province or state in which the work was performed. The arbitration shall proceed in accordance with the provisions of the Arbitration Act in the Province or State of the Arbitration. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The costs of the arbitrator shall be divided equally between the parties.

Article 10. Confidentiality

- 10.1 "Confidential Information" includes, but is not limited to prototypes, trade secrets, intellectual property, information, technical data, research, products, services, development, ideas, processes, designs, drawings, engineering, marketing, markets, customer information, business plans, business policies or practices, forecasts or financial information, team process, design process, part supply, pricing, development process and procedures, disclosed by State and Vendor under this Agreement which at the time of disclosure is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Confidential Information shall include, but not be limited to, all materials marked "Confidential Information". The confidential business information which is to be provided by State to Vendor is the sole property of State or its customer, including but not limited to; financial information, printed material, marketing brochures and literature, photographs, videos, plans, methods, policies and strategies; insofar as the same are and remain confidential business information of State not generally known or available to the public.
- 10.2 All disclosures of Confidential Information (whether written or oral) by State and Vendor shall: (a) remain in confidence for a period of three (3) years from the date of disclosure, except that any trade secrets or information with respect to State products or research and development (or those of its customer) will remain in confidence in perpetuity; and
(b) be reproduced or used by Vendor only to the extent necessary to fulfill its obligations hereunder.
State and Vendor shall protect shared Confidential Information with the same degree of care as it normally exercises to protect its own confidential information of similar nature, but at a minimum with a reasonable degree of care to prevent its unauthorized use, dissemination or publication. Each party shall be entitled to disclose Confidential Information of the other party where compelled by law to so disclose pursuant to any legal, judicial or administrative proceeding, provided the disclosing party provides all reasonable prior notice to the other party to allow it to seek a protective order or other appropriate relief. State and Vendor pledges and agrees that it shall keep totally confidential any and all of the said information and other such matters arising hereto, and shall not disclose to any other person or persons, corporation, agent or consultant with whom it is or may be associated with, any such confidential information without express permission being given in writing by an authorized officer of other Party.
- 10.3 State and Vendor each agrees not to use the other party's Confidential Information for its own use or for any purpose except as necessary to perform the goods and services under the Purchase Order. State and Vendor

- each agrees not to disclose the confidential information to others, without the express written permission of the other party.
- 10.4 Vendor shall not directly or indirectly acquire any interest in, or design, create, manufacture, sell or otherwise deal with any item or product, based upon or derived from the Confidential Information provided by State, except as may be expressly agreed to in writing by State.
- 10.5 All materials, including Confidential Information disclosed by State and Vendor under this Agreement shall remain the property of the disclosing party. Each party shall, upon the completion of the Purchase Order or request by the other party, return all materials received or obtained under this Agreement, including Confidential Information, and all copies and all documents containing any portion of any Confidential Information.
- 10.6 Notwithstanding anything to the contrary contained in this Article, the Confidential Information may be disclosed to the extent that such disclosure is necessary to comply with any law, regulation, or order of court, provided that each party shall give the other party reasonable advance notice of any such proposed disclosure, shall use its reasonable best efforts to secure an agreement in writing to be bound by the provisions of paragraphs 15.2 and 15.3 of this Article from any person obtaining access to the Confidential Information pursuant to this paragraph 15.6, and shall advise the other party in writing of the manner of such disclosure.
- 10.7 Information shall be deemed not to be confidential if such information is or becomes publicly known through no wrongful act of the receiving party, or is already known by the receiving party as evidenced by competent proof thereof, or is approved for release by the prior written approval of the disclosing party, or is rightfully received by the receiving party from a third party without restriction and without breach of this agreement, or is disclosed by the disclosing party to a third party without a similar restriction on the rights of such third party, or is independently developed by the receiving party without the use of the Confidential Information.
- 10.8 State and Vendor each acknowledge that compliance with the provisions of this Agreement is necessary to protect their proprietary interests. Each party further acknowledges that any unauthorized use or disclosure to any person or entity in breach of this Agreement will result in irreparable and continuing damage, and that each party shall be authorized and entitled to obtain immediate injunctive relief and any other rights or remedies to which it may be entitled. If either party violates any of the above agreements, it acknowledges that money damages will be an inadequate remedy and that the violated party will be entitled to specific performance or to injunctive relief to prohibit the violating party from continuing to violate this agreement even if no money damages can be proven.
- 10.9 Each party represents and warrants that it has the right to disclose any information provided to the other party in furtherance of the purpose described in this Article, without violating any agreement with or right of any other person or company. Confidential Information disclosed by a party hereunder may include Confidential Information of a third party, provided that the third party has authorized such disclosure, and in such event this Agreement shall apply equally to such Confidential Information and shall inure to the benefit of such third party.

FOLLOWING TERMS APPLY TO ALL VENDORS PROVIDING SERVICES IN ADDITION TO ABOVE:

ARTICLE 11. Terms for Subcontractors.

- 11.1 Statutory declarations or waiver of liens may be required with each payment application or with the final payment application depending on the requirements of our customer or the Prime Contract. Subcontractor shall make application for payment together with supporting notarized statutory declarations (CCDC 9B) if applicable and any other required documents for each invoice (including waiver of lien if required) on or before the 20th day of each month (herein called the "Billing Date") and provide them to State for approval and due processing covering the value of the products delivered at the site and the work performed by Subcontractor proportionate to the amount of this Purchase Order up to the last day of the month, whereupon payment to the Subcontractor in the amount of 90% of the certified sum shall become due and payable on the last day of the month following receipt of payment from State's customer. **In no event shall payment be due to the Subcontractor unless and until State receives payment from its client on account of these amounts.** Where State or its customer make any changes to the amount of the applications for payment as submitted by the Subcontractor, the Subcontractor shall be notified promptly in writing. The Subcontractor shall be given the opportunity to defend the Subcontractor's submission without delay.
- 11.2 Conditional upon State having received payment from its client on account of these amounts, if no claims exist against the Subcontractor's work and the Subcontractor has submitted to State Group a sworn statement that all accounts which may have been incurred by the Subcontractor in the performance of the contract have been paid in full, except for holdback amounts or an identified amount in dispute, amounts withheld from progress payments will become due and payable:

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- a) One day following the expiration of the holdback period stipulated in the lien act applicable to the place of work; or
- b) Where lien legislation does not exist or does not apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed upon between the parties. State may retain out of the holdback amount any sums required by law to satisfy any liens against the Subcontractor's work, or, if permitted by the lien legislation applicable in the jurisdiction of the work, other third party monetary claims against the Subcontractor which are enforceable against State.
- 11.3 State may, at any time, on written order, make changes to the work, and the contract price will be adjusted accordingly. Before proceeding with any change, Subcontractor must first obtain written authorization from State setting out in detail the change, and the adjustment, if any, to the contract price. No one in State's employ has authority to direct the Subcontractor to make changes in the work to be done by oral order. State shall not be liable to the Subcontractor for any extra labour, materials or equipment furnished or work performed without written authorization.
- 11.4 For any work on a time and material basis, all timesheets are to be approved by an authorized State representative daily for hours worked and material quantities only. Rates are to be submitted and approved prior to the start of all site works.
- 11.5 The contract and/or changes may be subjected to an Owner-directed audit. Failure to comply and/or provide supporting documentation may impede payment process.
- 11.6 All work is to be performed in accordance with all state, federal and provincial codes, rules and regulations.
- 11.7 In no event will State or its customer be liable to the Subcontractor under this agreement for any indirect, special, incidental or consequential damages of any kind whatsoever.
- 11.8 For jobs performed in the Province of Ontario, form 1000 must be completed and presented at the job site at the start of the project.
- 11.9 Should State permit the Subcontractor to use any of its equipment, tools or facilities, such will be considered gratuitous and the Subcontractor releases State from and indemnifies and holds State harmless from and against any and all claims for bodily injuries, including death, arising out of the use of any such equipment, tools or facilities, whether or not based on the condition thereof or any alleged negligence on the part of State in permitting the use thereof.
- 11.10 All standard terms and conditions are considered to be part of the Purchase Order unless a formal subcontract agreement is issued. Should a subcontract agreement be issued, the subcontract agreement takes precedence.

ARTICLE 12. Insurance

- 12.1 Vendor shall maintain liability and property damage insurance covering damage to the property of others including State's in amounts satisfactory to State, and in accordance with the requirements of the specifications.
- 12.2 Prior to commencing the work, Vendor shall provide to State a certificate of good standing from the Workers Safety Insurance Board as well as a certificate of insurance in a form satisfactory to State certifying compliance with the insurance requirements and providing that the said insurance policy will not be changed or canceled during its term until after at least 30 days' written notice to State.
- 12.3 Insurance coverage shall be maintained for the duration of the contract, and shall be (at minimum):

General Liability Insurance - \$5 million per occurrence
Workers Compensation / CSST Coverage – as per Province / State requirements
Automobile - \$2 million minimum per occurrence
Errors and Omission insurance - \$2 million minimum per occurrence (when applicable – for design or professional services)

The insurance is primary without the right of contribution of any other insurance carrier by or on behalf of State or the Owner. The Vendor waives all rights of subrogation against State and the Owner. State should be listed as an "additional insured" on the contract where applicable (General Liability, and others where permitted).

These amounts should be considered minimum coverages. Where the Prime Contract requires additional coverages, the Vendor must comply to the Prime Contract.

ARTICLE 13. Safety Provisions

- 13.1 Vendor shall comply with the provisions of the applicable occupational health and safety legislation including all regulations made thereunder.

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- 13.2 Vendor shall comply with the State's Safety Policies, as well as all health and safety policies and procedures of our Customer. Proper personal protective equipment must be worn at all times. Smoking is not permitted on the site.
- 13.3 For jobs to be performed in Ontario, we require a "Declaration of Competent Supervisor" form completed and returned before the start of the job if working onsite unsupervised by State.

ARTICLE 14. Labor and Union Affiliation

- 14.1. Vendor shall carry out the work with labor forces whose union affiliations are compatible with the union affiliation of State, and further agrees that in the event of labor disruption due to the employment of labor by Vendor or by the presence of such labor on the site, it will make such arrangements as may be necessary, in the opinion of State, to prevent delay in the carrying out of the work and expense to the State. Vendor will be responsible to declare their presence to the local union governing their trade group before beginning work. Vendor agrees to discontinue the employment of any of its employees who may be unsatisfactory to State.

Article 15. Performance

- 15.1 Vendor acknowledges that its work is not limited to any specific part of the plans, drawings or specifications but shall include all work, labor, materials, and equipment normally performed by this Subcontractor's trade and reasonably necessary or implied for the satisfactory completion of the project.
- 15.2 Vendor shall assume liability for protection of its own work and materials as well as free issued material until either completion of the project or final acceptance by the Owner, whichever shall first occur, to the extent insurance coverage is not otherwise provided. Subcontractor also shall assume liability for any and all damage to work or material of any other Subcontractor's Vendor's which may arise out of or in connection with Subcontractor's work under this Subcontract Agreement.
- 15.3 Vendor shall promptly inspect and report to State Group in writing any defects, deficiencies or problems in such work, material or equipment of others that render it unsuitable for proper execution by this Subcontractor, including but not limited to measurements of work already in place. Subcontractor's failure to inspect and report shall constitute an acceptance of the work, materials or equipment of others as fit and proper for the reception of this Subcontractor's work.
- 15.4 Vendor shall make all claims promptly to State for additional work, extensions of time, and damage from delays or otherwise, in accordance with the Contract Documents. Prime contracts may contain Owner directed audit procedures. Failure to comply with timely notification or providing supporting documentation to substantiate claims may impede Subcontractors entitlement process.
- 15.5 Vendor must place sufficient equipment and workers on the Job so that his work will progress to the satisfaction of both State and Owner. If Subcontractor should, in the opinion of State fail to comply with the above, for any reason whatsoever, State may give written notice to the Subcontractor and the Subcontractor shall have two (2) working days within which to comply. If the Subcontractor fails to comply within (2) working days, for any reason whatsoever, State shall have the right to terminate this contract, or complete the work. Subcontractor shall be liable for all costs incurred by State in completing the work.
- 15.6 Vendor agrees to commence work within two (2) working days after receipt of the notice to proceed or other direction to begin work and shall thereafter diligently and continuously process his work and coordinate his work being done on the Project with other trades as so that State Group shall not be delayed by any act or omission by Subcontractor in completion of the project within the time specified in the Contract Documents. Time is of the essence of this Purchase Order. Subcontractor will submit to State a schedule of work within the scope of this Subcontract that will be incorporated in the Project Schedule.
- 15.7 State shall not be liable to Subcontractor for additional compensation for compliance with schedule amendments or for delays of Subcontractor's work by act of neglect or default of Owner, the Architect or Owners Representative except to the extent the Contract Documents entitle State Group to reimbursement and State actually receives reimbursement for the same. It is expressly understood that only obligations between State and Subcontractor is to pass on to Owner any claim Subcontractor has for damages for delays caused by Owner or Owner's Representative.
- 15.8 Subcontractor warrants that it is in full compliance with all licensing requirements under applicable Federal, Provincial, State and Local Law.
- 15.9 Vendor shall not let, assign or transfer this Subcontract, or any part thereof or any interest herein, including, without limitation, the pledging or assigning or collateral of any sums due hereunder without written consent of State.
- 15.10 Vendor agrees that if it is in default of Purchase Order for failure to (a) refuse to proceed with its work as directed by State under the Contract Documents, (b) neglects to prosecute it's work diligently and properly, whether due to inadequate and incompetent supervision, insufficiently or improperly skilled workers, lack of materials or

proper quality or quantity or for any other reason fails to properly perform this work, (c) fails or refuses to properly perform or abide by any terms, covenants, conditions or provisions contained in this Subcontract, (d) fails or refuses to obey laws, ordinances, regulations or other codes of conduct, (e) furnishes faulty or defective workmanship or materials, (f) files a petition for voluntary bankruptcy or has an involuntary petition for bankruptcy filed against it or has any petition filed for the appointment of a receiver or makes any assignment for the benefit of creditors or is deemed insolvent by State., Subcontractor shall be notified in writing by certified mail of State's intentions. Subcontractor will be responsible for all excess monies above the original contract amount for State's completion of work outlined by the Purchase Order. State will use all legal means within the law to secure compensation for these additional costs, including attorney and court costs.

- 15.11 Vendor agrees that in the event a lien or encumbrance of any type is filed by any party in relation to the labor and/or material being furnished by said Vendor, Vendor will have the same discharged either by payment of said claim or posting a bond discharging such lien or liens as may be satisfactory to State, all within five (5) days after receipt of written notice from State to Subcontractor. In event any such lien is not discharged, State shall have the right to either terminate the Subcontract for default as well as exercise any other legal remedies provided for hereunder by law or State may retain adequate funds from Subcontractors progress payments to satisfy the lien.
- 15.12 Vendor will clean up and haul away all debris occasioned by work done by it hereunder and will leave the building and premises clean insofar as work performed under these Purchase Order Terms and Conditions. If in the opinion of State the Vendor has failed or refused to comply with this condition. State shall have the clean up performed and withhold the cost from the Vendor's progress payments.
- 15.13 Vendor agrees that this contract can be terminated for convenience at any time upon proper notice being given. In the event this does occur, Vendor will be reimbursed all quantifiable costs for the work performed to date plus a reasonable fee for those services performed.
- 15.14 Vendor agrees to correct all deficiency items within (15) calendar days of the date of the deficiency list inspection or State may proceed with the corrective work at the expense of the Vendor. No retainage will be paid until all deficiency list items are corrected and accepted by the Architect and/or Owner.
- 15.15 Vendor may be required to provide bonding as determined by State or the Owner to satisfy the Vendor contractual obligations under this agreement.