

Gateway Economic Development Corp.

758 Bolivar

Cleveland, Ohio 44115

PROJECT NAME(S)	JOB NO(S).

TO:

Attention:

Telephone No.:

DATE _____ F.O.B.

TERMS _____

SHIP ON _____ VIA _____

SHIP TO _____

Send invoices in DUPLICATE for each shipment promptly, together with a Bill of Lading, showing route, weight and through rate of freight. To insure correct delivery, mark all packages with Purchase Order number and Job number.

FURNISH THE FOLLOWING ITEMS SPECIFIED BELOW IN ACCORDANCE WITH TERMS AND CONDITIONS ON THE FACE AND REVERSE SIDE HEREOF.

QUANTITY	JOB NO.	COST CENTER	COST CODE	COST TYPE	DESCRIPTION	PRICE

This Purchase Order, which constitutes an offer to purchase, includes the Terms and Conditions on the attached pages. By shipping the above goods, or by acknowledging receipt of this order, or by commencing the performance of the above work, you agree to such Terms and Conditions, although your agreeing to such Terms and Conditions is not limited to the foregoing methods. Reference to any form or communication of yours shall not be deemed to be an acceptance of any terms and conditions therein, and any different or additional terms or conditions in any proposal, acknowledgment form or any other documents of yours are hereby objected to and superseded by these Terms and Conditions.

PURCHASE ORDER NUMBER AND JOB NUMBER MUST APPEAR ON ALL INVOICES, SHIPPING MEMOS, BILLS OF LADING, EXPRESS RECEIPTS AND PACKAGES. WE ARE SENDING YOU 2 COPIES OF THIS ORDER. KINDLY SIGN AND RETURN 1 COPY TO US.

PURCHASE ORDER

NO.

ACCEPTED

BY
Title:

DATE

BY
Title:

TERMS AND CONDITIONS OF PURCHASE

Seller and Buyer agree to be bound by all the terms and conditions contained or incorporated herein, all of which are a part of this Purchase Order Agreement ("Purchase Order"). Any provisions in Seller's invoices, billing statements, acknowledgment forms or similar documents which are inconsistent with the provisions of this Purchase Order shall be of no force or effect, regardless of whether such provisions would materially alter the terms hereof.

1. **ORDER AND ACCEPTANCE:** Seller's commencement of or promise of shipment of the subject matter of this Purchase Order (the "merchandise") shall constitute Seller's agreement that it will deliver the merchandise in accordance with the terms and conditions of this Purchase Order. Seller agrees to follow the shipping and invoicing instructions issued by Buyer, which instructions are incorporated by reference into this Purchase Order. Shipment by Seller of any part of the merchandise ordered herein shall constitute an acceptance of this order for all of the merchandise ordered herein and acceptance of the terms, conditions, and instructions printed and written on both sides hereof. Any request or demand for, or statement purporting to make Seller's acceptance conditional on Buyer's assent to, additional or different terms shall be of no effect. Buyer may revoke or modify this Purchase Order at any time prior to acceptance by Seller. Stenographic and clerical errors are subject to correction.

2. **PRICES:** Unless otherwise specified, prices are F.O.B. Buyer's facility and/or jobsite. Unless specifically otherwise set forth, prices include the amounts of all applicable sales, use, transfer, excise or other taxes, tariffs or custom duties.

3. **TERMS:** Terms of payment, unless otherwise expressly agreed in writing, are as set forth on the face hereof, F.O.B. Buyer's facility (except that risk of loss with respect to nonconforming goods shall not pass to Buyer unless and until nonconformities are cured or Buyer accepts notwithstanding the nonconformities). All payments shall be made in United States currency. Payment shall not be to the prejudice of any claims which Buyer might have against Seller on account of omissions or shortages in shipment. Buyer may require, as a condition precedent to any payment, that Seller furnish such details of cost, waivers of lien, sworn statements and other documentation (in form and substance satisfactory to Buyer) as Buyer may request from time to time.

4. **NO ASSIGNMENT:** Seller may not assign any rights or delegate any duties which Seller may have under this Purchase Order in whole or in part, except the right to receive payment for merchandise delivered and accepted in accordance with this Purchase Order. Any assignments or delegation in violation of the foregoing is void and not binding on Buyer unless the prior written consent of Buyer is obtained. No such assignment or delegation shall bar Buyer from asserting against Seller or the transferee or both any claim Buyer may have against Seller.

5. **UNAVOIDABLE CANCELLATION:** Buyer reserves the right to cancel this order in whole or in part in the event of lockout, strike, unavoidable accident, riot, war, act of God, fire, flood, earthquake, or any other casualty whatsoever affecting any or all of Buyer's premises.

6. **CANCELLATION:** This Purchase Order is not subject to cancellation or modification, in whole or in part, except with Buyer's express written consent. Buyer may terminate and rescind all or part of this Purchase Order in the event Seller breaches or fails to perform any of its obligations, or in the event Seller becomes insolvent or proceedings are instituted by or against Seller under any provisions of any federal or state bankruptcy or insolvency laws, or in the event Seller ceases its operations, or in the event Buyer requests adequate assurance of due performance and Seller fails to provide such assurance within ten (10) days after the date of Buyer's request therefor. Time is of the essence to this Purchase Order, and Seller's failure to meet any delivery date shall constitute a breach of this Purchase Order. Merchandise shipped under this Purchase Order after the cancellation date on the reverse side may be returned at Seller's expense plus Buyer's administration expense.

7. **OPTIONAL CANCELLATION:** Buyer shall have the option at any time (whether or not Seller is in default) upon notice to Seller to terminate this Purchase Order in whole or in part as to the undelivered portion of the merchandise to be furnished hereunder or to delay the delivery or completion of all or part of the merchandise. Such termination or delay shall be without cost to Buyer to the extent that the merchandise consists of standard stock goods which can be resold by Seller. In all other cases, Seller shall have the right to compensation (a) in the case of termination, for actual costs incurred by Seller in connection with this Purchase Order prior to such termination; provided, however, that in no event shall such amount, together with all previous payments made to Seller, exceed the price(s) set forth in this Purchase Order; or (b) in the case of delay, for reasonable handling and storage charges.

8. **SELLER'S REPRESENTATIONS AND WARRANTIES:** Seller represents and warrants to Buyer, in addition to all warranties implied by law, that each item of merchandise described on the face hereof, together with all related packaging and labeling and other material furnished by Seller, shall (a) be free from defects in design, workmanship or materials including, without limitation, such defects as could create a hazard to life or property; (b) conform in all respects with all applicable federal, state and local laws, orders and regulations, including, but not limited to, those regarding occupational safety and health; (c) not infringe or encroach upon Buyer's or any third party's personal, contractual or proprietary rights, including patents, trademarks, copyrights, rights of privacy or trade secrets; and (d) conform to all of Buyer's specifications and to all articles shown to Buyer as merchandise samples. All warranties set forth in this Section 8 or in any other part of this Purchase Order or which are implied by law shall survive any inspection, delivery, acceptance or payment by Buyer.

9. **MERCHANTABILITY:** Seller represents and warrants to Buyer that all goods, materials and merchandise delivered pursuant to this Purchase Order will be merchantable at the time of delivery to Buyer and at the time of use by Buyer's customers, and will be fit and safe for sale and use by Buyer or its customers for which such items are ordinarily intended and for any particular intended use of which Seller or its agents have knowledge.

10. **FAIR LABOR STANDARDS ACT:** In accepting this Purchase Order, Seller shall be deemed to represent that the merchandise was or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. Unless otherwise agreed in writing, Seller shall insert a certificate on all invoices submitted in connection with this Purchase Order stating that the merchandise covered by the invoice was produced in compliance with applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.

11. **NON-DISCRIMINATION IN EMPLOYMENT:** In accepting this Purchase Order, Seller shall be deemed to represent that the merchandise to be furnished and/or work to be performed hereunder was or will be produced or performed in compliance with Executive Order 11246 and regulations issued thereunder.

12. **INDEMNIFICATION:** Seller agrees to reimburse, indemnify, hold harmless, and defend at its expense (or to pay attorneys' fees incurred by Buyer) against any claim, loss, expense or damage of whatever kind or description, including any special, incidental and consequential damages or damages for personal injury, death or property damage, which may result from Seller's breach of its representations and warranty obligations under this Purchase Order or which may result from any products liability claims relating to the merchandise. Without limiting the foregoing, Seller agrees to maintain product liability insurance providing Broad Form Seller's Coverage in an amount not less than that customarily maintained by comparable suppliers, and at Buyer's request Seller will provide Buyer with a Certificate of Insurance evidencing such coverage, which Certificate of Insurance shall identify Buyer as a named insured. Seller further agrees to indemnify, defend and hold Buyer, the project, and the project owners harmless from and against any and all liens, claims, damages, demands and causes of action by any lower tier

subcontractors, suppliers, vendors, laborers and other persons or entities arising from or relating in any way to any work or materials furnished hereunder.

13. **WORK ON BUYER'S PREMISES:** If Seller's work under this Purchase Order involves operations by Seller on the premises of Buyer, Seller shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work. Except to the extent that any such injury is due solely and directly to Buyer's negligence, Seller shall indemnify Buyer against all loss which may result in any way from any act of omission of the Seller, its agents, employees, or subcontractors. Seller shall maintain such public liability, property damage, and employer's liability and compensation insurance as will protect Buyer from said risks and from any claims under any applicable Workers' Compensation and Occupational Disease Acts.

14. **BUYER'S PROPERTY:** Unless otherwise agreed in writing, all designs, drawings, specifications, artwork, plates, patterns, tools and/or dies of every description furnished to Seller by Buyer or unconditionally appropriated to the contract, or any replacement thereof, or any materials affixed or attached thereto, shall be and remain the personal property of Buyer. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as property of Buyer and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's orders. Such property while in Seller's custody or control shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer and shall be subject to removal at Buyer's written request, in which event Seller shall prepare such property for shipment and shall re-deliver it to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted.

15. **SHOP DRAWINGS:** Seller shall, at its own expense, prepare and submit to Buyer such shop drawings, samples, models and other submittals for the merchandise as may be requested by Buyer. Such shop drawings, samples, models and other submittals shall be approved in writing by such persons as Buyer may designate before Seller proceeds under this Purchase Order. No approval of any submittals nor the making of any payment to Seller shall constitute an acceptance of any merchandise or impair Buyer's right of inspection or rejection or any other rights or remedies to which Buyer may be entitled, or relieve Seller from any of its obligations or warranties hereunder.

16. **OWNERSHIP OF DOCUMENTS:** All plans, drawings, reports, manuals, specifications, test data or other documents or information prepared by Seller pursuant to this Purchase Order shall be furnished to Buyer and shall be the property of Buyer, and Buyer shall have the unlimited right to publish, transfer, sell, license and use all or any part of such documents or information without additional payment to Seller.

17. **CONFIDENTIALITY:** Any specifications, drawings, notes, instructions, engineering notices, technical data or other information furnished by Buyer to Seller in connection with this Purchase Order or prepared by Seller pursuant to this Purchase Order shall be treated as secret and confidential by Seller. Seller shall not, without Buyer's prior written consent, disclose any such document or information to any party other than those employees of Seller who require the same for the performance of their duties in connection with this Purchase Order.

18. **DEDUCTIONS AND SET-OFF:** Any sums payable to Seller shall be subject to all claims and defenses of Buyer or any of its affiliated companies, whether arising from this or any other transaction or occurrence, and Buyer may set-off and deduct against any such sums all present and future indebtedness of Seller or any of its affiliated companies to Buyer or any of its affiliated companies.

19. **DEFECTIVE MERCHANDISE:** Notwithstanding prior payment, Buyer reserves the right to return, at any time, for full credit at Seller's expense (including but not limited to cost of

packing and transportation to and from source) and risk, all or any part of the merchandise shipped hereunder which is defective in material or workmanship or which differs in any way from any drawings, specifications and warranties herein contained or implied by law or which otherwise does not conform to the requirements of this Purchase Order, and Seller shall have no right thereafter to cure such defects or failure to conform to such specifications and warranties. Buyer reserves the right, but shall not be obligated, to repair any defects and debit from the Seller any expenses involved when in Buyer's sole judgment the cost of making such repairs would be less than the cost of replacement by Seller or cancellation of this Purchase Order. Buyer reserves the right, but shall not be obligated, to require Seller to repair or replace, at Buyer's option, defective or non-conforming merchandise, at Seller's expense. If Buyer returns defective merchandise as authorized by this Paragraph, Buyer may additionally cancel any remaining unshipped portion of this Purchase Order.

20. **INSPECTION:** Buyer may inspect and test the merchandise during manufacture, construction, or preparation and shall have the right to inspect the merchandise at the time of delivery and/or completion. Notwithstanding previous inspections by Buyer, if defects or nonconformities for which Seller is responsible under the terms of this Purchase Order are revealed by subsequent inspection, analysis, manufacturing operations, use or otherwise, Buyer may reject or revoke its acceptance of the merchandise or any part thereof within a reasonable time after such defects or nonconformities are discovered or pursue its rights or remedies under Section 19 hereof or otherwise.

21. **PASSAGE OF TITLE:** Payment of freight charges shall not affect passage of title. Until Buyer has inspected the merchandise shipped under this order and has accepted it as being in conformity with all representations made by Seller when it was ordered, Seller's delivery obligation shall not be deemed complete, nor shall title pass to Buyer. Seller represents and warrants to Buyer that Seller shall have good title to the merchandise free and clear of all liens at the time of passage of title thereto to Buyer.

22. **CHANGES:** Buyer shall have the right to make changes in this Purchase Order, but no additional charge will be allowed unless authorized in writing by Buyer. If such changes affect delivery or the price sought by Seller, Seller shall notify Buyer immediately.

23. **CONTRACT AND JURISDICTION:** This Purchase Order and the effect of any contract formed pursuant hereto shall be construed and enforced in accordance with the laws of the State of Ohio.

24. **NON-WAIVER:** The failure of the Buyer to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions or of the right of Buyer thereafter to enforce each and every such provision.

25. **LICENSES:** Seller shall obtain and pay for any licenses, permits or inspections required by any governmental authority in connection with the manufacture, completion or delivery of the merchandise.

26. **MISCELLANEOUS:** (a) All rights granted to Buyer hereunder shall be in addition to and not in lieu of Buyer's rights arising by operation of law; (b) any provisions of this Purchase Order which are typewritten or handwritten by Buyer shall supersede any contrary or inconsistent printed provisions; (c) no modification of the terms of this Purchase Order shall be valid unless in writing and signed by Buyer; (d) should any of the provisions of this Purchase Order be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining provisions; (e) all of the terms herein shall apply to additional quantities of merchandise ordered by Buyer except to the extent covered by a new purchase order; (f) this Purchase Order, together with any information or documents incorporated herein by reference, shall be deemed to contain the entire agreement between Buyer and Seller and to constitute the complete and exclusive expression of the terms of the agreement, all prior or contemporaneous

written or oral agreements or negotiations with respect to the subject matter hereof being merged herein.

27. DISPUTES: Any and all claims, disputes, controversies, demands, and causes of action of whatever nature or description arising from or relating to this Purchase Order (including without limitation contract, equity, tort or legal claims) shall be submitted to mandatory and binding arbitration in the Cleveland Tribunal of the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The decision and Award of the Arbitrator(s) shall be final and binding on Buyer and Seller, and the decision and Award may be reduced to judgment and enforced in any Court of competent jurisdiction. This agreement to arbitrate shall be specifically enforceable under the Ohio Arbitration Act and the Federal Arbitration Act.

28. INCORPORATION BY REFERENCE: The general, special and supplemental conditions, drawings, plans, specifications and delivery and construction schedules referred to herein or in the attached Schedule 1 are specifically incorporated by reference and are made a part of this Purchase Order. Seller agrees to perform all portions of the work hereunder for Buyer, subject to and in strict accordance with the terms and conditions set forth in this Purchase Order and all such general, special and supplemental conditions, drawings, plans, specifications, and delivery and construction schedules referenced herein or the attached Schedule 1. It is further understood and agreed that all documents between Buyer and its customer also are incorporated into this Purchase Order by reference and are made a part hereof. Seller represents and agrees that it has carefully examined and understands this Purchase Order and the referenced and incorporated documents. The documents (other than provisions relating to the contract price or fee payable to Buyer) have been made available to Seller and will remain available to Seller at reasonable times at the branch office of Buyer which is managing the Project. This Purchase Order and the provisions of the referenced documents are intended to supplement and complement each other and shall, where possible, be so interpreted. If, however, any provision of this Agreement conflicts with a provision of the referenced documents, or if there is a conflict within this Purchase Order or within any of the referenced documents, the provision imposing the higher quality, greater quantity or greater duty or obligation on Subcontractor shall govern. Seller shall be bound by all interpretations of the Contract Documents made by Buyer's customer and furnished to it by Buyer which are binding upon Buyer. Seller further agrees to be bound by and to assume toward Buyer all the terms, obligations, responsibilities and conditions of the referenced and incorporated documents to the same extent that Buyer, in turn, is bound by such referenced documents to the owner or customer.

29. LIEN WAIVER: For good and valuable consideration, including the negotiated price for goods and/or services under this Purchase Order, Seller unconditionally waives and releases any and all mechanics' lien rights or claims of lien rights against the property or project or Buyer. Seller agrees not to file any mechanics' liens to secure payment under this Purchase Order. Seller further agrees that any such lien shall be void and unenforceable and shall constitute a substantial and material breach of this Purchase Order. Buyer shall be entitled to set off under this Purchase Order an amount equal to two times the amount of the lien claim of Seller or any of Seller's lower tier subcontractors, suppliers, vendors and/or laborers. Buyer shall be entitled to recover from Seller the attorneys' fees and expenses that Buyer incurs to defend and/or discharge and such mechanics' lien or claim.

SCHEDULE 1

[List All Contract Documents]

AUTHOR MUST RETAIN HISTORY SHEET FOR FUTURE REFERENCING OF DOCUMENT ID NUMBER. THE HISTORY SHEET WILL AUTOMATICALLY BE UPDATED BY THE WORD PROCESSING CENTER.