

## Purchase Order - General Terms and Conditions

**1. Seller's Acceptance of Purchase Order:** This Purchase Order ("PO") is subject to the following terms and conditions. These terms and conditions constitute an offer by Buyer and may be accepted by Seller by commencing performance, delivering goods to Buyer, or signing and returning the PO to Buyer. Acceptance is limited to the terms stated herein, and any additional or different terms proposed by Seller are hereby rejected unless expressly agreed to in writing by Buyer.

**2. Delivery:** Time is of the essence of this PO. If delivery of conforming goods or performance of conforming services is not completed by the time(s) promised, Buyer reserves the right, in addition to its other rights and remedies, to cancel this PO, to reject such goods or services in whole or in part on reasonable notice to Seller, and/or to purchase substitute goods or services elsewhere and charge Seller with any loss incurred. Any provisions herein for delivery of goods or performance of services in installments shall not be construed as making the obligations of Seller severable. Shipment sent C.O.D. without Buyer's written consent will not be accepted and will be at Seller's risk.

**3. Acceptance; Warranties:** In addition to all warranties and remedies available under law, Seller hereby makes the following warranties and agreements, which warranties and agreements shall survive the delivery, inspection, acceptance, or payment for the goods or services:

(a) All goods and services shall be received subject to Buyer's inspection, testing, approval, and acceptance at Buyer's premises notwithstanding any inspection or testing at Seller's premises or any prior payment for such goods or services. All goods and services covered by this PO shall conform to the specifications, drawings, samples or other descriptions specified by Buyer and shall be merchantable, fit for the purposes intended, and free from defects in workmanship and material. Services provided shall be performed in accordance with good workmanlike standards. Defects in workmanship and material shall not be deemed waived by Buyer's failure to notify Seller upon receipt of goods, inspection, or completion of services, or by payment of invoice. Goods and services rejected by Buyer as not conforming to this PO or specifications, whether provided by Buyer or furnished with the goods, may be returned to Seller at Seller's risk and expense and, at Buyer's request, shall immediately be repaired or replaced.

(b) The goods will not infringe any third party's intellectual property rights. Seller shall indemnify, defend and hold harmless Buyer, its officers, employees, customers of any tier and their respective successors and assigns, from and against any and all liability, damage, loss, cost or expense incurred, including reasonable attorneys' fees, in connection with any claim, suit or action for actual or alleged infringement of any such rights.

(c) If Seller breaches any of the foregoing warranties, or the goods or services are otherwise defective or non-conforming, during a period of two (2) years after Buyer's acceptance of the goods or services, Seller shall, at Buyer's option, promptly repair, replace, or refund the amount paid for such goods and services. Seller shall bear the cost of shipping and shall bear the risk of loss of all defective or non-conforming Items while in transit.

(d) Unused Goods and Materials. If Buyer purchased materials as part of the project scope, unused materials that remain after the completion of the project shall either be left on site, or Buyer shall receive a credit against the balance of the contract price for any materials that Seller removes from the site.

**4. Title; Risk of Loss:** Title and risk of loss shall not pass to Buyer until receipt by Buyer (or to carrier designated by Buyer in cases where shipment is made F.O.B. Seller's shipping point). Buyer shall not be liable for any discharge, spill, loss, damage or other incident, including but not limited to expense for any clean-up costs, involving any materials transported hereunder prior to completion of such delivery.

**5. Force Majeure:** Neither party shall be responsible for its failure to perform due to causes beyond its reasonable control, including without limitation acts of God, fire, theft, war, riot, embargoes, or acts of civil or military authorities. If delivery of goods or performance of services are to be delayed by such contingencies, Seller shall immediately notify Buyer in writing and Buyer may either: (i) extend time of performance; or (ii) terminate all or part of the uncompleted portion of this PO at no cost to Buyer.

**6. Governing Law; Forum; Attorney Fees:** This PO shall be deemed to have been made in Roanoke, Virginia and shall be construed and enforced under Virginia law, without reference to its conflict of laws rules. Regardless of what venue would otherwise be permissive or required, the parties stipulate that all actions arising under this PO shall be brought in the state or federal courts located in the City of Roanoke, Virginia. If either party breaches any of its obligations under this PO, the breaching party shall pay all reasonable costs, expenses, and fees, including reasonable attorneys' fees, incurred by the non-breaching party in enforcing its rights under this PO. In addition, the non-prevailing party in any suit or action relating to this PO shall pay all such costs, expenses, and fees incurred by the prevailing party.

**7. Modification:** No modification of this PO shall be effective without Buyer's written consent. No course of prior dealing, no usage of the trade and no course of performance shall be used to modify, supplement or explain any terms used in this PO.

**8. Termination:** Buyer reserves the right to terminate this PO at any time with respect to undelivered goods or unperformed services by written notice (including email) or oral notice confirmed in writing.

**9. Compliance:** Seller represents and warrants that the prices charged, the goods and/or services covered by this PO, and shipment of the goods, shall comply with all applicable federal, state, and local laws and regulations in effect at time of quotation, sale, delivery and performance. If this PO requires the presence on Buyer's property (whether owned or leased) of Seller's employees, subcontractors or others under Seller's control, Seller shall comply, and cause its subcontractors to comply, with all applicable federal, state, and local laws, regulations, and rules of such premises.

**10. Survival:** The provisions of Sections: 2, 3, 4, 5, 6, 10, and 11 shall survive the delivery and acceptance of the goods or services or the termination of this PO.

**11. Insurance; Indemnification:** (a) Without limiting or qualifying Seller's liabilities, obligations, or indemnities otherwise assumed by Seller pursuant to this PO, Seller hereby agrees that before commencing any work it will obtain and maintain, and cause its subcontractors, if any, to obtain and maintain, the following insurance: (i) Workers' Compensation and Occupational Diseases, including Employer's Liability, subject to a limit no less than \$500,000 or the statutory requirements, whichever is greater; (ii) Comprehensive General Liability Insurance, including products, completed operations, premises and contractual liability endorsements, with limits of at least \$2,000,000 for each occurrence; and (iii) Comprehensive Automobile Liability insurance with limits for bodily injury and property damage combined of \$2,000,000. This coverage shall include insurance for non-owned and hired vehicles. Seller shall insure all loss or damage to any work of Seller prior to acceptance, and to any owned or leased tools, vehicles and equipment.

All of the above insurance shall be written through companies satisfactory to Buyer, and shall name the Buyer and, where applicable, property owner as additional insureds (except under Statutory Part I of the Workers' Compensation and Occupational Diseases Insurance). All of the insurance coverage provided by Seller will be primary to, and not contributing with, any other available insurance coverage of Buyer and property owner and shall contain a waiver of any rights of subrogation in favor of Buyer and property owner. Seller shall provide Buyer certificates of insurance prior to commencing any work hereunder evidencing the procurement of the above insurance. The certificates shall obligate the Insurer to notify the Buyer at least thirty (30) days in advance of effective date of any modification and/or cancellation.

(b) To the fullest extent permitted by law, Seller shall defend, indemnify, and hold harmless Buyer from and against any and all liability, losses, damages, costs, claims, lawsuits, judgments, settlements and expenses, including without limitation reasonable attorneys' fees, arising from bodily injury (including death) to any persons, whether employed by Buyer, Seller or others, or damage to any property, whether owned, leased or used by Buyer, Seller or others, including without limitation, the loss of use thereof, occurring or arising out of or in connection with the goods or services herein contemplated, but only to the extent caused by the negligent acts or omissions of the Seller, or any parties for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Seller shall indemnify Buyer in an amount proportional to the amount of Seller's own negligence or fault (and the negligence or fault of any parties for whose acts they may be liable), compared to the proportional amount of fault, if any, attributable to all parties indemnified hereunder.

**12. Equal Opportunity:** Seller agrees, in connection with performance of work under this PO, not to discriminate against any employee or applicant for employment because of disability or status as a disabled veteran, other protected veteran, recently separated veteran, or Armed Forces Service Medal veteran. Seller and Seller's subcontractors shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to protected veteran status or disability. Unless exempted, the terms of 29 CFR Part 471, Appendix A to Subpart A are incorporated herein by reference.

**13. Compliance with Policies:** To the extent Seller's employees, subcontractors, or agents will perform services at Buyer's facilities, Seller represents, warrants and covenants that: (i) all Seller employees, subcontractors and agents shall comply with Buyer's workplace safety policies, as posted on the website (<https://associatedasphalt.com/contractor-compliance-policies/>), and as applicable, Buyer's Contractor Safety, PPE, Safe Work, Hot Work, Confined Space, LOTO, Fall Protection, Hazcom, and Contractor Safety Policies; (ii) all Seller employees, subcontractors and agents shall comply with Buyer's Alcohol and Drug Free Workplace Policy while performing any operations on Buyer's property, and Seller acknowledges that such individuals may be subject to post-accident testing in compliance with such policy; and (iii) Seller shall be responsible for enforcing the workplace safety policies as posted on the website or on Buyer's premises, and as otherwise communicated to Seller with regard to its employees, subcontractors and agents who perform work on Buyer's property.