

## Terms and Conditions

1. The following terms and conditions, together with the terms set forth in the purchase order form incorporates by reference any plans, specifications, Prime Contract between Owner and General Contractor ("Contract Documents") to the extent that those Contract Documents involve, relate to, or are affected by any and all work, services, goods, materials, products, and/or software (the "Supplies") being supplied under this Purchase Order or other documents as are incorporated by reference, as amended in any subsequent authorized writing from Buyer, shall constitute the entire contract ("Purchase Order") between Brayman Precast LLC. ("Buyer") and Supplier. Supplier shall assume as to Buyer all obligations of Buyer to Owner, and/or higher tier contractors under the Contract Documents. If this Purchase Order is construed as an offer, this offer expressly limits acceptance to the terms of this offer and notice of objection to any different, additional or prior terms is hereby given. If this Purchase Order is construed as an acceptance of an offer, this acceptance is expressly conditioned upon the offeror's assent to any different or additional terms contained or referenced in this Purchase Order. If this Purchase Order is construed as a confirmation of an existing contract, the parties agree that this confirmation states the exclusive terms of any contract between the parties. This Purchase Order shall be deemed accepted by the Supplier upon receipt by the Buyer of any writing, including a writing transmitted by fax or other means of electronic transmission, indicating acceptance, or by the commencement of performance or shipment of any Supplies or any portion thereof.

2. The net amount shall be payable within thirty (30) days after the later of (i) delivery and acceptance of Supplies or other performance conforming to the terms of this Purchase Order and (ii) invoicing. Unless expressly otherwise provided, Buyer shall not be liable for any shipping, handling, fuel surcharges or similar fees. EXECUTION OF THIS PURCHASE ORDER BY SUPPLIER IS A CONDITION PRECEDENT TO PAYMENT.

3. (a) At its sole cost and expense, Supplier shall procure and maintain in force during the term of this Purchase Order insurance coverage limits as follows:  
(i) Commercial General Liability Insurance on an occurrence basis coverage of not less than \$2,000,000 per occurrence, \$2,000,000 per Project aggregate. CGL to include Products Liability/ Completed Operations coverage in the amount of \$2,000,000 per occurrence.  
(ii) Automobile Liability Insurance covering owned, non-owned, and hired automobiles, including coverage for bodily injury and property damage with a combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence.  
(iii) Worker's Compensation and Employer's Liability Insurance as required by the laws of the state in which the Project is located, but Employers' Liability coverage shall be not less than \$1,000,000 per occurrence.  
(iv) Any additional insurance as set forth in the Contract Documents.

(b) Buyer shall be named as an additional insured. Supplier shall provide certificates of insurance and endorsements reflecting waiver of subrogation, thirty-day notice of cancellation, primary and non-contributory coverage, and additional insured. Failure to Maintain Insurance. If Supplier fails to obtain the required insurance coverage, or fails for any reason to maintain the required insurance coverage, that event shall be considered a material breach entitling Buyer to withhold payment and terminate this Purchase Order for default. The failure of Supplier to obtain the insurance and/or endorsements required herein prior to its commencement of performance and any failure of Buyer to identify such and inform Supplier of any non-compliance shall not be deemed a waiver of such requirements or of any rights or remedies that Buyer may have, nor shall it relieve the Supplier of any of its obligations or liabilities herein. Moreover, acceptance by Buyer of insurance submitted by Supplier does not relieve or decrease in any manner the liability of the Supplier for performance hereunder. The Supplier is responsible for any losses, claims, and/or costs of any kind not covered by Supplier's insurance. Supplier waives all rights of subrogation against Buyer, Owner, Architect, Engineer, separate contractors, and other subcontractors on the Project. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

4. Within five (5) days after award of this Purchase Order, Supplier shall submit to Buyer a source of supplies list for any and all Supplies being provided thereto.

5. Supplier warrants to Buyer that all items covered by this Purchase Order conform to the samples, drawings, specifications, plans, or other descriptions provided by the Contract Documents. Suppliers are not authorized to substitute. All goods shall be merchantable; fit for Buyer's intended purpose; of good material, workmanship and design; and free from defect. Supplier also guarantees that the goods are of sufficient size or capacity to perform as specified. Supplier agrees that Buyer and any representative designated by Buyer, for itself and on behalf of Buyer ("Buyer's Representative"), shall have the benefit of all manufacturers warranties, express or implied, issued on or applicable to the goods and Supplier authorizes Buyer and/or Buyer's Representative to obtain the customary services furnished in connection with such warranties and guaranties. Supplier hereby assigns such warranties to Buyer. This Purchase Order incorporates by reference any and all warranties (express, implied, oral or written) made by Supplier prior to or at the time this Purchase Order is accepted, including those contained in brochures, catalogues, advertisements, owner's manuals, etc., provided that in the event of a conflict, the warranty providing the most protection to Buyer shall prevail. All warranties shall survive inspection, acceptance and payment. Supplier agrees to repair or replace free of charge any Supplies or portion thereof which prove defective or which operate unsatisfactorily. Such remedies shall be available to Buyer in addition to all others afforded to it by this Purchase Order or at law or equity.

6. The Supplier and all Supplies furnished under this Purchase Order shall be subject to the approval of the Buyer and Buyer's customer. Supplier shall furnish the required number of submittal data or samples for said approval. In the event approval is not obtained, this Purchase Order may be cancelled or modified by Buyer with no liability on the part of the Buyer.

7. Unless the Purchase Order expressly states otherwise, all Supplies shall be shipped FOB: the "Ship to" location designated in the Form. Risk of loss shall not pass to Buyer until Supplies called for in this Purchase Order actually have been received and accepted by the Buyer at the destination specified herein. Supplier assumes full responsibility for packing, crating, marking, transportation and liability for loss and/or damage even if Buyer has agreed to pay freight, express or other transportation charges.

8. From and after the date of this Purchase Order, Supplier agrees to indemnify, defend and hold harmless ("Indemnity Obligations") the Buyer and its subsidiaries, affiliates, directors, officers and employees ("Indemnified Parties") from any and all claims, losses, damages, expenses and liabilities, of whatever nature, including but not limited to attorneys' fees in any manner arising from, resulting from, or related to any acts, errors, omissions, negligence or gross negligence of Supplier, its agents, sub-agents, employees, contractors, or sub-subcontractors; strict liability for defective products supplied by Supplier under this Purchase Order; breach of any warranty, implied or express, under this Purchase Order or by law; breach of this Purchase Order; or actual or alleged infringement of letters, patent or any litigation based thereon covering any Supplies purchased herein without limitation and

regardless of by whom such claim or liability may be asserted, for personal injury (including death), or loss or damage to property, or otherwise that may result directly or indirectly from the use, possession or ownership of the Supplies or from work performed or services provided by Supplier pursuant to this Purchase Order. The claims and liabilities referenced in this paragraph shall include but are not limited to any liquidated damages for which Buyer may be responsible, the cost of any project delay, and the cost of inspecting and testing any Supplies or the system in which the Supplies have been installed, resulting from claims that the Supplies are defective, or departs from the requirements of the Contract Documents or the plans and specifications. Any inspections, tests or approvals, including but not limited to the approval of shop drawings by Buyer and/or Owner, Architect or Engineer shall not relieve Supplier of its obligation to perform the Work in strict accordance with the plans, specifications, addenda and additional provisions of this Agreement. Buyer shall have the right to retain out of and deduct from any payments due or to become due to Supplier an amount sufficient to completely protect Buyer from any and all loss, damage or expense therefrom until any breach has been satisfactorily remedied or adjusted by Supplier. Buyer shall be permitted to deduct or withhold payment from Supplier in the event that third-party claims are filed or reasonable evidence indicating the probable filing of such claims. With regard to Supplier's obligation to defend, Buyer shall have the right to select the legal counsel whom Supplier shall provide to defend any Indemnified Party. Supplier shall not settle or compromise any claim or action giving rise to Claims in a manner that imposes any restrictions or obligations on Buyer without Buyer's prior written consent. If the Buyer elects to require that Supplier defend a Claim pursuant to this paragraph, and Supplier fails or declines to assume the defense of such Claim within thirty (30) days after notice thereof, the Buyer may assume the defense of such Claim for the account and at the risk of Supplier, and any liabilities related thereto shall be conclusively deemed a liability of Supplier and Buyer shall have the right to retain out of and deduct from any payments due or to become due to Supplier an amount sufficient to provide for the Indemnification Obligations set forth herein. The indemnification rights of the Indemnified Parties herein are in addition to all other rights which such Indemnified Party may have at law or in equity or otherwise.

9. In addition to other remedies provided by law, Buyer reserves the right to reject any Supplies or to revoke any previous acceptance and to cancel all or any part of the Purchase Order if Supplier fails to deliver all or any part of the Supplies. Acceptance of any part of the Purchase Order shall not bind the Buyer to accept any future shipments, nor deprive it of the right to return Supplies already accepted. Buyer shall be at liberty to reject any Supplies. At Buyer's option, if Buyer so elects in its sole discretion with regard to any particular dispute, any dispute arising in connection with this Purchase Order shall be resolved by arbitration in Butler, PA in accordance with the rules of the American Arbitration Association; and all disputes shall otherwise be resolved in and only in the Court of Common Pleas of Butler County, PA as the exclusive judicial forum and in accordance with the substantive laws of the Commonwealth of Pennsylvania without giving effect to Pennsylvania's choice of law principles. SUPPLIER WAIVES ITS RIGHT TO A JURY TRIAL REGARDING ANY DISPUTE OF THIS PURCHASE ORDER.

10. Supplier shall furnish all necessary lien waivers, affidavits or other documents required to keep the Buyer's AND Buyer's customer's premises free from liens or claims for liens, arising out of the furnishing of Supplies herein or Work performed hereunder, as payments are made from time to time under this Purchase Order.

11. Buyer may assign this Purchase Order without notice or consent from Supplier. Supplier shall not, without prior written consent of Buyer, have any right to assign this Purchase Order or any benefits arising from this Purchase Order. Unless otherwise agreed upon in writing, the rights of Supplier's assignee, if any, shall be

subject to all set-offs, counterclaims, and other comparable rights of Buyer arising hereunder. Supplier shall not, except as otherwise agreed in writing by the Buyer, delegate or subcontract the work on any item of material or service to be delivered

or performed under this Purchase Order.

12. Buyer, in its sole discretion and without cause, may terminate this Purchase Order, in whole or in part, at any time without incurring liability to Supplier for lost profits, or any other costs or damages, other than the proportionate value of the purchase price for Work completed on site or Supplies delivered. In such event, Supplier shall immediately stop all Work in process. Payment due shall be a percentage of the purchase price equal to the percentage of the unit prices in the purchase price specified for Supplies delivered. Supplier's warranties, and Supplier's liability for defective or non-conforming Supplies or Work, as well as sections 3, 5, 8 and 9 of these Terms and Conditions, shall survive termination and remain in full force and effect.

13. All prior representations, conversations or preliminary negotiations are deemed to be incorporated in this Purchase Order and no changes will be considered or approved unless modified by an authorized representative of the Buyer in writing.

14. IF DELIVERY DATES CAN NOT BE MET, SUPPLIER SHALL INFORM BUYER IMMEDIATELY. Such notice shall not, however, constitute a change to the delivery terms of this Purchase Order unless Buyer modifies this Purchase Order in writing. If any Supply is not received by the date specified, the Buyer, at Buyer's option and without prior notice to Supplier, may either approve a revised date or may cancel this Purchase Order and may obtain such Supplies elsewhere and in either event the Supplier shall be liable to the Buyer for any resulting loss incurred by the Buyer. Should any delay on part of the Supplier and/or any nonconformance of the Supplies occasion loss, damage or expense including consequential damages to the Buyer or Buyer's customer, the Supplier shall indemnify the Buyer and Buyer's customer against such loss, damage or expense including but not limited to attorneys fees. Supplier's sole remedy for a delay caused by Buyer shall be an extension in the time for Supplier's performance equal to the duration of Buyer's delay. Supplier shall not be liable for damages resulting from Supplier's failure to deliver or complete or for delays in delivery or completion caused solely by strikes not caused by or within the control of Supplier, lock-outs not caused by or within the control of Supplier, fires, war or acts of God. TIMING OF DELIVERY IS OF THE ESSENCE.

15. The following notices are hereby incorporated by reference: The Equal Opportunity Clause 41 CFR Part 60-1.4(b), the Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246), and the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246).

16. The requirements of Executive Order 13496 found at 29 CFR 471 Appendix A to Subpart A (pertaining to posting of required notices of Employee Rights under the National Labor Relations Act) are hereby incorporated by reference into this Purchase Order. If applicable, the Supplier agrees to comply with the provisions of the Required Contract Provisions Federal-Aid Construction Contracts (Form FHWA-1273) which is incorporated by reference into this Purchase Order. For applicable projects in the Commonwealth of Pennsylvania: A subcontractor that fails to file a Notice of Furnishing on the Dept. of General Services' publicly accessible Internet website as required by the act of August 24, 1963 (P.L.1175, No.497), known as the Mechanics' Lien Law of 1963, may forfeit the right to file a mechanics lien. It is unlawful for a searchable project owner, searchable project owner's agent, contractor or subcontractor to request, suggest, encourage or require that a subcontractor *not* file the required notice as required by the Mechanics' Lien Law of 1963.