

PETCOSKY COMPANIES

Purchase Order Terms and Conditions

1. Acceptance: As used herein, "Contractor" means any one of the Petcosky Companies, including but not limited to Petcosky Fire Protection Inc., Petcosky Fire Protection South Inc., and Petcosky & Sons Plumbing and Heating D/B/A Petcosky Mechanical, together with any of their respective parent companies, subsidiaries, affiliates, divisions, successors and assigns, whether now existing or hereafter formed or acquired, that issues this Purchase Order or is purchasing the goods, materials, equipment or services described herein. This Purchase Order constitutes an offer by Contractor to the Vendor listed on the reverse side of the Purchase Order ("Vendor") on the terms and conditions stated herein and shall not be binding upon Contractor until acceptance thereof by Vendor, either by acknowledgement or performance. Acceptance of this offer is expressly limited to the terms and conditions hereof, no deviations therefrom shall be acceptable to Contractor, and in the event of an inconsistency between the terms of this offer and any purported acceptance thereof by Vendor, the terms of this Purchase Order shall prevail. Any additional or different terms contained in Vendor's acceptance are hereby objected to by Contractor without any further notice of objection unless Contractor assents to such additional or different terms in writing. No action or inaction by Contractor, such as receipt or use of the goods purchased, shall constitute an assent to terms other than the terms herein.

2. Cancellation: Contractor shall have the right to cancel this Purchase Order, in whole or in part, without charge or expense if: (a) the awarding authority, architect or engineer does not approve of Vendor as a qualified Vendor, materialman or subcontractor or of Vendor's submittal, drawings, submittal data, materials or equipment, or (b) Vendor breaches or fails to observe strictly any of the terms or conditions of this Purchase Order, including without limitation the obligations to ship and deliver materials or equipment as directed by Contractor. Contractor further reserves the right to cancel this order in whole or in part at any time, for any other reason, in which case Contractor's sole liability shall be for the payment of a reasonable amount for services performed, goods accepted or goods in the process of manufacture prior to cancellation. Any goods paid for shall become Contractor's property. If any good ordered is a standard product not made to order, this or the applicable portion thereof is subject to cancellation by notice from Contractor prior to shipment, in which event Contractor shall have no liability to Vendor whatsoever.

3. Compliance With Contract Documents: The Contract Documents for the Job specified are incorporated herein by reference. The Contract Documents for the Job specified consist of this Agreement, and any other Exhibits attached hereto, the Prime Contract between the Owner and Prime Contractor, any Contract between the Prime Contractor and Contractor, if applicable, the General, Supplementary and other Conditions of the Prime Contract, Drawings, Specifications, all Addenda issued by Owner prior to the execution of this Purchase Order, the job schedule as may be amended from time to time, any subsequent modifications or revisions, and any other documents listed in or referred to by the Prime Contract or the Contract between the Prime Contractor and Contractor. Materials and equipment furnished under this Purchase Order shall comply with and be manufactured in accordance with all applicable provisions of the Contract Documents and approved submittal drawings and data. No deviation from the Contract Documents shall be permitted except with the prior written approval of Contractor, Prime Contractor and the awarding authority.

4. Submittal Drawings and Data: If indicated on the face hereof, Vendor shall furnish submittal drawings, O&M manuals and data on purchased materials and equipment. Vendor shall furnish to Contractor required copies of accurate submittal drawings and data on items purchased within three (3) weeks from the date of the Purchase Order. All proposed deviations from the Contract Documents referred to in Paragraph 3 shall be clearly shown on the submittal drawings and data and shall be fully described in their transmittal.

5. Startup and Training: If indicated on the face hereof, Vendor shall supply to Contractor the startup and training services specified within the time provided for on the face of this Purchase Order.

6. Shipment and Schedule: Any Job that is referred to in this Purchase Order is being constructed on the basis of a progress schedule. Time is of the essence of that progress schedule and of this Purchase Order. Necessary shop drawings and any required data and samples are to be submitted by the date indicated on this Purchase Order or as directed by Contractor to meet the progress schedule. Deliveries of the goods are to be made by the date or dates indicated on this Purchase Order or as directed by Contractor to meet the progress schedule. Vendor shall

notify Contractor immediately if Vendor is unable to ship or complete the order or any part of it by the date or dates specified. Contractor's required deliveries, whether or not set forth on the face of this Purchase Order, are subject to revision by Contractor, at Contractor's sole discretion, to meet the progress schedule. Vendor acknowledges that Contractor is bound by the Contract Documents to deliver certain goods and services within specific time periods, and Vendor further acknowledges and agrees that any delay by it can result in liability to Contractor under the Contract Documents. Vendor therefore agrees that it shall be liable for any direct or consequential damages incurred by Contractor due to any delay in performance hereunder and further agrees that the amount of such damages may be set off against the price hereunder, in addition to any other remedy at law or equity.

7. Warranties: Vendor warrants to Contractor that the goods will (i) be new unless otherwise specified by Contractor and free from all defects in workmanship and materials, (ii) conform to all statutory warranties imposed by law, (iii) be furnished in strict compliance with all applicable laws, regulations, and codes to which the goods are subject, (iv) conform to all applicable requirements of the Contract Documents, (v) conform to all samples, specifications, and other descriptions furnished by Vendor to Contractor, and (vi) if of Vendor's design, be free from defects in design. The implied warranties of merchantability and fitness for a particular purpose may not be disclaimed by Vendor. Vendor additionally warrants good title to all materials delivered in accordance with this Purchase Order and agrees that if requested by Contractor, and as a prerequisite to payment, Vendor shall furnish bills of sale and other instruments of title which shall assure that materials have been delivered free of liens and/or other encumbrances. Vendor agrees promptly to remedy any defects latent or patent not due to ordinary wear and tear or to improper use or maintenance, which may occur within one (1) year from date of acceptance by Owner, or within the guarantee period set forth in the Contract Documents, whichever is longer. If any of the goods are found at any time to be defective or otherwise not in conformity with the requirements of this Purchase Order, Contractor, in addition to any other rights which it may have under warranties or otherwise, shall have the right to reject and return such goods, at Vendor's expense, and such goods shall not be replaced by Vendor without written authorization from Contractor. This warranty survives, and defects are not waived by, Contractor's acceptance of the goods, Contractor's failure promptly to notify Vendor of any nonconformity or any approval by any inspector or agent of Contractor.

8. Indemnification: To the fullest extent permitted by law, Vendor shall protect, defend, indemnify and hold harmless Contractor from and against any and all liability, expense, cost, damage and loss of any kind, including attorney's fees and expert's and consultant's fees, resulting from any claim, demand, liability, cause of action or damage for which Contractor might become liable arising from or in connection with Vendor's performance hereunder. Vendor further agrees to indemnify and hold harmless Contractor for all damages suffered by Contractor as a result of Vendor's failure to comply with the Occupational Safety and Health Act of 1970 and/or The Fair Labor Standards Act and the standards issued thereunder and for failure of the items furnished under this order to so comply. The Vendor shall also defend any suit, claim or proceeding brought against Contractor or Contractor's users or customers in so far as they are based on the claim that any goods or item or part thereof furnished pursuant to this Purchase Order constitutes an infringement of any patent of the United States or foreign patent or violates any trade rights of any description whatsoever, and Vendor shall indemnify and hold Contractor, its users and its customers, harmless from all loss and damage, including attorney's fees, expert's fees and consultant's fees, by reason of such suit, claim or proceeding.

9. Purchase Price: Unless otherwise expressly provided in this Purchase Order, the purchase price is payable in United States currency and includes all Vendor's sales, use, occupation, license, excise and other taxes with respect to the purchase and delivery of the goods identified on this Purchase Order. Unless otherwise agreed in writing, Contractor will not be responsible for any shipping, boxing, crating, or storage charges or expenses. The purchase price is firm and shall not be subject to increase. The purchase price includes, where applicable, all Vendor's engineering and preparation and submittal of such shop drawings, material lists, samples, color charts, and details as may be required by Contractor or under the Contract Documents. Vendor shall execute and furnish all necessary lien waivers, affidavits, or other documents required to keep the Owner's premises free from liens or claims of liens arising hereunder. Contractor shall be entitled at all times to set off against the purchase price any monies owing to Contractor from Vendor or any of its affiliates. Vendor further warrants that the prices for the items sold to Contractor under this order are not less favorable than those extended to any other customer for the same or like items and any reduction in price in any item covered by this order made subsequent to its receipt by Vendor shall be made applicable hereto.

10. Terms of Payment: Payment of invoices shall be according to the terms as stated on this Purchase Order. Provided, however, that notwithstanding any provisions contained in the Contract Documents any payment to the Vendor is directly contingent upon the receipt by Contractor of payment from the Owner or Prime Contractor, as applicable, for the material or equipment supplied. INVOICES OR REQUESTS FOR PAYMENT WILL NOT BE HONORED UNLESS THE PURCHASE ORDER NUMBER AND JOB NAME (if applicable) IS INCLUDED ON THE SAME. At the request of Contractor and as a condition to payment by Contractor, Vendor must provide a certificate that with respect to the production of the materials and equipment ordered hereunder Vendor has fully complied with the Fair Labor Standards Act, as amended, and all other applicable federal, state and municipal laws, rules and regulations.

11. Inspection: Contractor shall have the right at any time to inspect, examine, test and take samples of the goods wherever located prior to shipment and to conduct additional inspections, examinations, tests and samplings at any time after arrival at the job site. The making or failure to make any inspection of, or payment for or acceptance of the goods shall not impair Contractor's right to later reject nonconforming goods, or to avail itself of any other remedy to which Contractor may be entitled, notwithstanding Contractor's knowledge of the nonconformity, its substantiality, or the ease of its discovery. Vendor shall be liable for all inspection, reshipment and return costs on nonconforming goods.

12. Default Remedies: If (i) Vendor fails to perform any of the terms and conditions to be performed by Vendor under this Purchase Order, (ii) Vendor dissolves or is dissolved, liquidates or is liquidated, (iii) a proceeding in bankruptcy, insolvency, receivership or assignment for the benefit of creditors is instituted by or against Vendor, or (iv) Vendor becomes involved in labor difficulties, which, in Contractor's opinion, threaten Vendor's ability to perform in a timely manner, then Contractor may, in its sole discretion, and without notice to Vendor, declare Vendor to be in default under the Purchase Order. Upon and after a default, Contractor may without notice to Vendor, (i) cancel in whole or in part the Purchase Order and any and all other orders then outstanding between Contractor and Vendor, (ii) declare all sums owing under any other agreement, document or instrument between Contractor and Vendor, whether now or hereafter existing, to be immediately due and payable, and/or (iii) exercise any and all other rights and remedies available to an aggrieved buyer under applicable law, including without limitation, the Uniform Commercial Code. If Vendor fails to make deliveries as required, or if the goods fail to conform, Contractor shall have the right to refuse deliveries or to cancel any remaining parts of the Purchase Order and to purchase the goods elsewhere, and any excess cost of the same over the price provided in this Purchase Order shall be chargeable to and paid by the Vendor on demand. If any delay on the part of Vendor or arising because of nonconforming goods or because of Contractor's obtaining the goods elsewhere causes loss, damage, or expense, including consequential or liquidated damages to Contractor, then Vendor shall indemnify Contractor against such loss, damage, or expense and shall reimburse Contractor for the same on demand. All reasonable attorney's fees, legal expenses and experts' and consultants' fees incurred by Contractor in enforcing the Terms and Conditions of this Purchase Order and/or any of Contractor's rights or remedies under this Purchase Order and/or defending against any claim of Vendor or involving Vendor's goods shall be borne by Vendor.

13. Nonconforming Goods: With respect to any items which do not conform to the Contract Documents and approved submittal drawing and data or the conditions of the Purchase Order, Contractor may in Contractor's sole discretion: (a) hold such items for Vendor's instructions at Vendor's risk upon notification to Vendor; (b) return such items to Vendor at Vendor's expense; (c) require replacement of any rejected goods without additional cost to Contractor; or (d) retain and use the goods with an equitable reduction in purchase price. Such goods are not to be replaced without written authorization from Contractor. Vendor shall pay the cost of inspection and testing of goods rejected for cause and all transportation, storage and other charges thereon. Payment for any item shall not be deemed an acceptance thereof. Exercise by Contractor of its rights under this paragraph shall in no way prevent the exercise of such other rights as may be provided herein or by law.

14. Risk of Loss: Regardless of the transportation terms and charges, until final acceptance by Contractor of all the goods covered by the Purchase Order, Vendor shall assume all responsibility for any loss or damage to such goods, or to its supplies, equipment, materials, tools or appliances provided for use under this Purchase Order from any cause whatsoever, except damage or loss sustained as a result of a willful act of Contractor.

15. Insurance and Claims: If Vendor or its employees or agents come onto Contractor's premises or job site in connection with this Purchase Order, Vendor agrees to carry (i) Comprehensive General Liability Insurance

covering personal injuries (including death) in the amount of \$1,000,000 per occurrence, covering property damage in the amount of \$1,000,000 per occurrence and products liability in the amount of \$1,000,000, and (ii) Comprehensive Automobile Liability Insurance covering bodily injuries (including death) in the amount of \$1,000,000 per occurrence, and property damage in the amount of \$1,000,000 per occurrence. Vendor further agrees to provide and maintain Workers' Compensation Insurance and Employer's Liability Insurance including Broad Form All States Endorsement, Voluntary Compensation Endorsement, U.S. Longshoremen's and Harborworker's Compensation Act Endorsement, and Maritime Coverage, as required. Vendor shall also carry any and all additional insurance coverage and limits required by the Contract Documents or laws of the State in which the Job is situated. Vendor shall submit written proof of such insurance to Contractor prior to entrance on Contractor's premises or the job site. Vendor shall furnish such bonds as are required by the Contractor.

16. Compliance with Law: In accepting this order, Vendor represents that it has complied with and will continue during its performance hereunder to comply with all relevant provisions of federal, state and local laws and regulations. Vendor shall execute and deliver all documents as may be required to effect or evidence such compliance.

17. Governing Law: This Purchase Order shall be governed by the laws of the state of New York, Contractor's principal place of business. Contractor and Vendor hereby agree that any action or proceeding by and/or between Contractor and Supplier shall be adjudicated in the Broome County Supreme Court, New York and Contractor and Vendor irrevocably consent to the personal jurisdiction and venue of such court.

18. Successors and Assigns: The terms and conditions of this Purchase Order shall be binding on Contractor and Vendor, their respective successors and assigns. None of Vendor's rights or obligations under this Purchase Order may be assigned or otherwise transferred without Contractor's written consent. In the event of any transfer, hypothecation or assignment by Vendor, without Contractor's consent, of the right to receive all or any part of the payments due or to become due hereunder, Contractor may, at any time thereafter withhold any or all monies or payments due or to become due hereunder until final payment is due and all conditions precedent to such payment are satisfied. Contractor may, at its option, set off any amounts otherwise due from Contractor to Vendor under this Purchase Order against any delinquent amounts or liabilities which are due to Contractor from Vendor.

19. Modifications and Waiver: This Purchase Order is intended by the parties as the final expression of their agreement and is also intended as a complete and exclusive statement of the terms of such agreement. No course of prior dealings between the parties nor any trade usage shall be relevant to supplement or explain any term used herein. No alteration, change or modification of the provisions hereof, nor any waiver or renunciation of any right or claim accruing to Contractor shall be binding unless it is in writing and signed by an authorized representative of Contractor. No waiver of any performance required under this agreement shall be deemed a waiver of future compliance with all the terms hereunder.

20. Disputes: Contractor may, at its sole option, elect to arbitrate any dispute, the value of which is less than \$25,000 arising out of or related to this Purchase Order or the breach thereof using the Construction Industry Arbitration Rules of the American Arbitration Association. The locale for such arbitration shall be Binghamton, New York. The existence of a dispute between Contractor and Vendor, not involving a material default by Contractor in performance of a condition precedent to Vendor's performance shall not relieve Vendor of its obligation to perform under this Agreement. Disputes not arbitrated pursuant to this provision shall be decided in accordance with disputes provision of the Contract Documents. Notwithstanding the foregoing, Vendor agrees to participate in, join in and be bound by any proceedings, be they judicial, administrative, arbitration or other which directly or indirectly relate to this Purchase Order or to the specified job and for which Contractor demands by written notice that Vendor participate.

21. Interpretation: Vendor acknowledges and agrees that it has read, understands and has negotiated the terms of this Purchase Order. Therefore, this Purchase Order shall not be deemed to be the product of Contractor and shall not be enforced or interpreted any more stringently or strictly against either Contractor or Vendor.

All materials are to be supplied per plans and specifications and includes O&M documents.