

**CONTRACT FOR GOODS  
TILLAMOOK COUNTY AND CONTECH ENGINEERED SOLUTIONS LLC  
HUGHEY CREEK CULVERT MATERIALS**

This contract is entered into, in duplicate, by and between TILLAMOOK COUNTY, a political subdivision of the State of Oregon, hereafter called "county", and CONTECH ENGINEERED SOLUTIONS LLC, hereafter called "contractor", for the project entitled "HUGHEY CREEK CULVERT MATERIALS", hereinafter called "contract". The mutual promises of each are given in exchange and as consideration for, the promises of the other.

Contractor and county mutually covenant and agree as follows:

1. The GRAND TOTAL PRICE for the goods provided by contractor to county shall be in the amount quoted in the "Bid Form" which is the cost to county of Fifty-One Thousand One Hundred Twenty-Five and 00/100 Dollars (\$51,125.00), unless otherwise adjusted in accordance with the terms of this contract.
2. The time of completion for this contract is June 30, 2022.
3. The following "contract documents" are attached and are specifically incorporated herein in their entirety by reference:
  - 3.1 This Contract;
  - 3.2 Public Contract Provisions; and
  - 3.3 Quotation #QUO-487965-M7W6K3.

Contractor agrees as follows:

4. In consideration of the sums to be paid by county in the manner and at the times provided and in consideration of the other covenants and agreements contained herein, contractor agrees to provide the goods herein described. This contract shall be binding upon the contractor's heirs, executors, administrators, successors, and assigns.
5. Contractor shall faithfully complete and perform all of the obligations of the contract and in particular, shall promptly, as due, make payment of all just debts, dues, demands and obligations incurred in the performance of said contract; and shall not permit any lien or claim to be filed or prosecuted against the county, its agents or employees.
6. Contractor shall hold the county harmless for any liens, claims, damages or other liabilities of the contractor related to the performance of this contract. Contractor shall indemnify and save harmless the county from any claims, costs, damages or expenses of any kind, including attorney's fees and other costs and

**CONTRACT FOR GOODS  
TILLAMOOK COUNTY AND CONTECH ENGINEERED SOLUTIONS LLC  
HUGHEY CREEK CULVERT MATERIALS**

expenses of litigation for personal or property damage to contractor or to third parties arising out of contractor's performance of the duties required by this contract.

County agrees as follows:

7. In consideration of the faithful performance of all of the obligations, general and special, herein set out in accordance with the county and to its satisfaction, the county agrees to pay to the contractor the amount earned and to make such payments in the manner and at the times provided herein and in the schedule of contract prices.

The parties mutually agree as follows:

8. Miscellaneous

8.1 Integration

This contract supersedes all prior oral or written agreements between contractor and county regarding this project. It represents the entire agreement between the parties.

8.2 Savings

Should any clause or section of this contract be declared by a court to be void or voidable, the remainder of this contract shall remain in full force and effect.

8.3 Waiver; Modification

Failure to enforce any provision of this contract does not constitute a continuing waiver of that provision, any other provision or of the entire contract. The rights and duties under this contract shall not be modified, delegated, transferred or assigned, except upon the written-signed consent of both parties.

8.4 Jurisdiction; Law

This contract is executed in the State of Oregon and is subject at all times to Tillamook County Ordinances and Oregon law and jurisdiction. Venue shall be in Tillamook County, unless otherwise agreed by the parties.

8.5 Attorney Fees

Attorney fees, costs and disbursements necessary to enforce this contract through mediation, arbitration and/or litigation, including appeals, shall be awarded to the prevailing party, unless otherwise specified herein or agreed.

8.6 Notices

**CONTRACT FOR GOODS  
TILLAMOOK COUNTY AND CONTECH ENGINEERED SOLUTIONS LLC  
HUGHEY CREEK CULVERT MATERIALS**

Any notice required or permitted under this contract shall be in writing and deemed given when:

- 8.6.1. Actually delivered, or
- 8.6.2. Three (3) days after deposit in the United States Mail, certified, postage prepared, addressed to the other party at their last known address.

ACKNOWLEDGEMENT: EACH PARTY REPRESENTS TO THE OTHER BY THEIR SIGNATURES BELOW THAT EACH HAS READ, UNDERSTANDS AND AGREES TO ALL COVENANTS, TERMS AND CONDITIONS OF THIS CONTRACT. EACH PARTY REPRESENTS BY THEIR SIGNATURES BELOW TO HAVE THE ACTUAL AND/OR APPARENT AUTHORITY TO BIND THEIR RESPECTIVE PARTY IN CONTRACT.

Approved as to form and content this 29<sup>th</sup> day of March, 2022.

  
Contract Officer

Dated this 29<sup>th</sup> day of March, 2022.

CONTRACTOR: CONTECH ENGINEERED SOLUTIONS LLC

\_\_\_\_\_  
Brent E. Flom, P.E.  
11815 NE Glenn Widing Drive  
Portland, Oregon 97220  
303-929-2025  
Brent.flom@conteches.com

///

///

**CONTRACT FOR GOODS  
TILLAMOOK COUNTY AND CONTECH ENGINEERED SOLUTIONS LLC  
HUGHEY CREEK CULVERT MATERIALS**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2022.

THE BOARD OF COMMISSIONERS  
FOR TILLAMOOK COUNTY, OREGON

	Aye	Nay	Abstain/Absent
_____ David Yamamoto, Chair	___	___	___/___
_____ Erin D. Skaar, Vice-Chair	___	___	___/___
_____ Mary Faith Bell, Commissioner	___	___	___/___

ATTEST: Tassi O'Neil,  
County Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Special Deputy

\_\_\_\_\_  
Joel W. Stevens  
County Counsel

**CONTRACT FOR GOODS  
TILLAMOOK COUNTY AND CONTECH ENGINEERED SOLUTIONS LLC  
HUGHEY CREEK CULVERT MATERIALS**

**PUBLIC CONTRACT PROVISIONS**

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any sub-contractor. If contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the contractor or a sub-contractor by any person in connection with the contract as such claim becomes due, the owner may pay such claim to the persons furnishing the labor or materials and charge the amount of payment against funds due or to become due contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the contractor or contractor's surety from contractor's or surety's or its obligation with respect to any unpaid claim. If the owner is unable to determine the validity of any claim for labor or materials furnished, the owner may withhold from any current payment due contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
2. Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such contractor or sub-contractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from contractor or any sub-contractor in connection with the performance of the contract shall promptly be paid.
3. Contractor shall not permit any lien or claim to be filed or prosecuted against the owner on account of any labor or materials furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
4. Contractor and any sub-contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
5. If this contract involves lawn and landscape maintenance, contractor shall salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost effective.
6. Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
7. Contractor shall employ no person for more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases,

**CONTRACT FOR GOODS  
TILLAMOOK COUNTY AND CONTECH ENGINEERED SOLUTIONS LLC  
HUGHEY CREEK CULVERT MATERIALS**

contractor shall pay the employee at least time and one-half (1 and 1/2) pay for all overtime in excess of eight (8) hours a day or forty (40) hours in any one (1) week when the work is five (5) consecutive days, Monday through Friday; or for all overtime in excess of ten (10) hours a day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday, and for all work performed on Saturday and on any legal holidays as specified in ORS 279B.020.

8. The contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
9. Contractor must give notice to employees, in writing, that they cannot be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of a law, rule, or regulation related to a federal contract or grant.
10. All employers working under the contract are either subject employers who will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
11. The contract may be cancelled at the election of owner for any willful failure on the part of contractor to faithfully perform the contract according to its terms.
12. Contractor's Compliance with Tax Laws
  - A. Contractor must, throughout the duration of this contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes all the provisions described in subsection 13.3.1 through 13.3.4 of this contract.
  - B. Any violation of subsection A of this section shall constitute a material breach of this contract. Further, any violation of contractor's warranty, in subsection 13.3 of this contract, that contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this contract. Any violation shall entitle county to terminate this contract, to pursue and recover any and all damages that arise from the breach and the termination of this contract, and to pursue any or all of the remedies available under this contract, at law, or in equity, including but not limited to:
    1. Termination of this contract, in whole or in part;

**CONTRACT FOR GOODS  
TILLAMOOK COUNTY AND CONTECH ENGINEERED SOLUTIONS LLC  
HUGHEY CREEK CULVERT MATERIALS**

2. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to contractor, in an amount equal to county's setoff right, without penalty; and
  3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of contractor's breach of this contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement services.
- C. These remedies are cumulative to the extent the remedies are not inconsistent, and county may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.
13. Contractor's Representations and Warranties

Contractor represents and warrants to county that:

- A. Contractor has the power and authority to enter into and perform this contract.
- B. This contract, when executed and delivered, is a valid and binding obligation of contractor, enforceable in accordance with its terms.
- C. Contractor (to the best of contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the effective date of this contract, faithfully has complied with:
  1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
  2. Any tax provisions imposed by a political subdivision of this state that applied to contractor, to contractor's property, operations, receipts, or income, or to contractor's performance of or compensation for any work performed by contractor;
  3. Any tax provisions imposed by a political subdivision of this state that applied to contractor, or to goods, services, or property, whether tangible or intangible, provided by contractor; and
  4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
- D. Any goods or equipment delivered to county under this contract, and contractor's services rendered in the performance of contractor's obligations under this contract, shall be provided to county free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

**END OF PUBLIC CONTRACT PROVISIONS**

Quote # QUO-487965-M7W6K3					
<b>Date</b>	3/17/2022	<b>Account Name</b>	Tillamook County	<b>Reply-To</b>	
<b>Quote #</b>	QUO-487965-M7W6K3	<b>Contact Name</b>	Ron Newton	<b>Contech Rep.</b>	Matthew Houser
		<b>Phone</b>	(503) 842-3419	<b>Address</b>	11815 NE Glenn Widing Dr., Portland, OR, 97220
<b>Project Name</b>	Hughey Creek	<b>Fax</b>		<b>Phone</b>	503-784-5026
<b>Project #</b>	698969	<b>Email</b>		<b>Fax</b>	
<b>Project City/State</b>	Tillamook, OR			<b>Email</b>	Matthew.Houser@conteches.com

Contech's offer to sell the products described in this quotation is expressly conditioned upon Buyer's assent to the Contech Conditions of Sale ("Contech COS") included herewith and/or viewable at [www.conteches.com/cos](http://www.conteches.com/cos). A valid tax exemption certificate must be issued to Contech or sales tax will be added.

Item #	Description	Pieces	Quantity	Extended Unit Price	Unit	Unit Total
	CONTECH Aluminum Structural Plate Pipe Arch 45 LF - 14'-11" Span x 9'-10" Rise HL93 Vehicular Loading Min/Max Allowable Cover: 3'/9' Aluminum Headwalls and Wingwalls		1.00	\$51,125.00	EA	\$51,125.00
					<b>Total</b>	\$51,125.00
					(Tax not included) <b>Net Total</b>	\$51,125.00

- Standard Notes**
- All orders must be shipped within 30 days of manufacture or a storage charge applies equal to a maximum of 5% per month of the selling price of the stored material.
  - Allowable unloading time for delivery trucks is two (2) hours. Demurrage charges of \$100.00 per hour thereafter will be added.
  - Construction loadings typically exceed the intended post-construction live load used for design. Contact your Contech representative for specific guidelines and limitations based on the construction live loads anticipated.
  - Flexible structures of the type on this project are reliant on the type of structural backfill used, the compaction of that material and the balanced placement of structural backfill. Contact your Contech representative for specific information.
  - One or more of the products quoted herein is nonstandard and not returnable. A down payment equal to 1/3 of the item(s) total is required and must be received prior to commencement of any performance by Contech.
  - Prices are based on standardized loading to achieve full truckloads. If special loading requirements are needed additional freight charges will be added.
  - Prices are f.o.b. origin with freight allowed to the jobsite with unloading by others at a truck accessible location.
  - Prices quoted do not include assembly. Some or substantial assembly is required and is the responsibility of Buyer.
  - The estimated lead time for the submittal package is 2-4 weeks from the receipt of a signed purchase document and receipt of the required design documents and project information. Approval review process is in addition to stated timeframes. The estimated manufacturing lead time for this material is 8-10 weeks from the receipt of approved submittal documents.
  - The sale of these materials requires a preconstruction meeting be held that must include Contech and all parties directly involved in the construction process.
  - This material will be manufactured for this particular project and is not subject to cancellation. See Section 16 of the Contech COS.
  - This quotation expires 30 days from the date shown. Prices are firm for shipment within 90 days of the date of quotation and are subject to a maximum escalation of 8% for each 30 days thereafter.

**Scope Of Work**

**Aluminum Structural Plate**

Aluminum Structural Plate pricing includes plate layout drawings, unassembled materials including corrugated aluminum structural plates, reinforcing ribs (when applicable), and sufficient bolts and nuts. Anchor bolts, special fabrications for non square ends and fittings with associated hardware of any kind are not included unless specifically priced herein.

PAYMENT TERMS ARE 1/2%-10, NET 30 DAYS FROM DATE OF INVOICE UNLESS MATERIAL IS OTHERWISE NOTED AS NON-STANDARD ABOVE. IF NON-STANDARD, PAYMENT TERMS ARE 1/3 AT ORDER ACCEPTANCE AND PRIOR TO START OF PRODUCTION, 2/3 NET 30 DAYS FROM DATE OF INVOICE. THIS OFFER IS SUBJECT TO CREDIT APPROVAL. PRICES QUOTED APPLY ONLY TO THE REFERENCED PROJECT AND ARE IN EFFECT FOR 30 DAYS FROM THE DATE OF QUOTATION. SELLER RESERVES THE RIGHT TO ADJUST PRICES AFTER 30 DAYS FROM THE DATE OF QUOTATION BUT THE CONTECH COS REMAIN APPLICABLE. PRICES ARE BASED ON ESTIMATED QUANTITIES SHOWN. IF A DIFFERENT QUANTITY IS PURCHASED, CONTECH RESERVES THE RIGHT TO ADJUST THE PRICES. THIS QUOTATION CONTAINS THE ENTIRE AGREEMENT WITH RESPECT TO PURCHASE AND SALE OF PRODUCTS DESCRIBED AND SUPERSEDES ALL PREVIOUS COMMUNICATIONS, BUYER'S SIGNATURE BELOW, DIRECTION TO MANUFACTURE, OR ACCEPTANCE OF DELIVERY OF GOODS DESCRIBED ABOVE, SHALL BE DEEMED AN ACCEPTANCE OF THE CONTECH COS. SELLER EXPRESSLY REJECTS ANY OTHER TERMS AND CONDITIONS. PRICES ARE F.O.B. ORIGIN WITH FREIGHT ALLOWED TO THE JOBSITE WITH UNLOADING BY OTHERS AT A TRUCK ACCESSIBLE LOCATION. THIS QUOTATION IS ISSUED BY CONTECH ENGINEERED SOLUTIONS LLC FOR ITSELF AND/OR ON BEHALF OF ONE OR MORE OF ITS SUBSIDIARIES, INCLUDING BUT NOT LIMITED TO KEYSTONE RETAINING WALL SYSTEMS LLC.

<b>Acceptance</b>	<b>Contech Engineered Solutions LLC.</b>
-------------------	--



Quote # QUO-487965-M7W6K3			
WE HEREBY ORDER THE DESCRIBED MATERIAL SUBJECT TO ALL TERMS AND CONDITIONS OF THIS QUOTATION AND IN THE Contech COS INCLUDED HEREWITH AND VIEWABLE AT <a href="http://www.conteches.com/cos">www.conteches.com/cos</a>		<b>By</b>	Matthew Houser
Company		<b>(O)</b>	503-784-5026
By		<b>(F)</b>	
Title		<b>(Cell)</b>	
Date		<b>Title</b>	

Quote # QUO-487965-M7W6K3

**Contech - CONDITIONS OF SALE**

1. ACCEPTANCE. This quotation is an offer to sell to potential customer(s). BUYER'S RIGHT TO ACCEPT THIS OFFER IS LIMITED TO BUYER'S ASSENT TO THE TERMS AND CONDITIONS PRINTED HEREON AND THE ATTACHED OR ACCOMPANYING QUOTE, AND NO TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE IN THIS OFFER ARE BINDING ON SELLER. THERE ARE NO UNDERSTANDINGS, TERMS, CONDITIONS OR WARRANTIES NOT FULLY EXPRESSED HEREIN.

2. LIMITED WARRANTIES. Seller warrants that it can convey good title to the products sold under this contract and that they are free of liens and encumbrances. Seller also warrants that the products sold under this contract are substantially free from defects in material and workmanship for a period of one year after the date of delivery. There are no express or implied warranties with respect to products sold hereunder which are misused, abused or used in conjunction with mechanical equipment improperly designed, used or maintained, or which are used, supplied for use or made available for use in any nuclear application of which Seller has not been notified in writing by Buyer at the time of order for the products sold hereunder. SELLER MAKES NO OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ALL IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE ARE DISCLAIMED BY SELLER AND EXCLUDED FROM THIS CONTRACT.

3. LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY. Seller's liability hereunder shall be limited to the obligation to repair or replace only those products proven to have been defective in material or workmanship at the time of delivery, or allow credit, at its option. Seller's total cumulative liability in any way arising from or pertaining to any product or service sold or required to be sold under this contract shall NOT in any case exceed the purchase price paid by Buyer for such products or services. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, LOST PROFITS, CLAIMS FOR LABOR, OR CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY TYPE, WHETHER BUYER'S CLAIM BE BASED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES.

4. LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY FOR FAILURE OR DELAY IN DELIVERY. NO DELIVERY DATES ARE GUARANTEED. BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ONLY LIABILITY FOR ANY DELAY IN DELIVERY SHALL BE LIMITED AS SET FORTH IN PARAGRAPH 3 OF THIS CONTRACT.

5. FORCE MAJEURE. In any event and in addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance, which is (i) due to any act of God, the performance of any government order, any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law, local labor shortage, fire, flood or other casualty, governmental regulation or requirement, shortage or failure or raw material, supply, fuel, power or transportation, breakdown of equipment, or any cause beyond Seller's reasonable control whether of similar or dissimilar nature to those above enumerated, or (ii) due to any strike, labor dispute, or difference with workers, regardless of whether or not Seller is capable of settling any such labor problem.

6. BUYER'S OBLIGATION TO PASS ON LIMITATION OR WARRANTIES AND REMEDIES. In order to protect Seller against claims by Buyer's buyer, if Buyer resells any of the products purchased under this agreement, Buyer shall include the language contained in paragraphs 2 and 3 of this agreement, dealing with Seller's limitations of warranties and remedies, in an enforceable agreement with Buyer's buyer, or otherwise include language in an enforceable agreement with its buyer that makes Seller's limitation of warranties and remedies binding on its buyer. Buyer shall also include a provision in its agreement with its buyer applying Ohio law to any claims its buyer might assert against Seller with respect to products manufactured by Seller, and requiring its buyer to bring any such action against Seller either in federal district court in Cincinnati, Ohio or the common pleas court for Butler County, Ohio. Buyer shall defend, indemnify and hold Seller harmless from any and all claims, causes of action, damages, losses or expenses (including reasonable attorneys' fees) that Seller incurs by reason of Buyer's failure to comply with this paragraph.

7. PASSAGE OF TITLE. Title to the products sold hereunder shall pass upon delivery to the carrier at the point of shipment. Neither

Buyer nor the consignee shall have the right to divert or reconsign such shipment to any destination other than specified in the bill of lading without permission of the Seller. Unless otherwise agreed Seller reserves the right to select the mode of transportation.

8. PAYMENTS AND LATE CHARGES ON PAST DUE ACCOUNTS. Buyer represents that Buyer is solvent and can and will pay for the products sold to Buyer in accordance with the terms hereof. If Buyer shall fail to comply with any provision or to make payments in accordance with the terms of this contract or any other contract between Buyer and Seller, Seller may at its option defer shipments or, without waiving any other rights it may have, terminate this contract. All deliveries shall be subject to the approval of Seller's Credit Department. Seller reserves the right, before making any delivery, to require payment in cash or security for payment, and if Buyer fails to comply with such requirement, Seller may terminate this contract. A late charge of 1-1/2% monthly (18% annual rate) or the maximum allowed by state law, if less, will be imposed on all past due accounts, and Buyer is responsible for all costs of collection including without limitation reasonable attorneys' fees and court costs.

9. TRANSPORTATION CHARGES. Delivered prices or prices involving competitive transportation adjustments shall be subject to appropriate adjustment to reflect changes in transportation charges.

10. CLAIMS BY BUYER. Buyer shall thoroughly inspect products sold under this contract immediately upon receipt to verify conformance with the specifications of the contract. Buyer must notify Seller of claims for failure or delay in delivery within 30 days after the scheduled delivery date. Buyer must notify Seller of any claims for nonconforming or defective products within 30 days after the nonconformity or defect was or should have been discovered. In addition, Seller must be given an opportunity to investigate the claim before Buyer disposes of the material, or else Buyer's claim will be barred. Seller shall incur no liability for damage, shortages, or other cause alleged to have occurred or existed at or prior to delivery to the carrier unless the Buyer shall have entered full details thereof on its receipt to the carrier.

11. MECHANICAL PROPERTIES; CHEMICAL ANALYSES. Data referring to mechanical properties or chemical analysis are the result of tests performed on specimens obtained from specific locations of the product(s) in accordance with prescribed sampling procedures; any warranty thereof is limited to the values obtained at such locations and by such procedures. There is no warranty with respect to values of the materials at other locations.

12. PATENTS. Seller shall indemnify Buyer against attorneys' fees and any damages or costs awarded against Buyer in the event any legal proceeding is brought against Buyer by a third person claiming the material delivered hereunder in itself constitutes an infringement of any U.S. patent, provided Buyer gives Seller prompt notice of any such suit being brought, gives Seller the opportunity to defend any such suit, and cooperates with Seller with respect to any such defense; unless the material is made in accordance with material designs, or specifications required by Buyer, in which case Buyer shall similarly indemnify Seller.

13. PERMISSIBLE VARIATIONS. The products sold hereunder shall be subject to Seller's standard manufacturing variations, tolerances and classifications.

14. TECHNICAL ADVICE. Buyer represents that it has made its own independent determination that the products it is purchasing under this contract meet the design requirements of Buyer's project and are suitable for Buyer's intended application. Buyer further represents that it has not relied in any respect on any written or oral statements or advice from Seller, other than the standard product specifications set forth in the most recent addition of Seller's published product brochures, in making that determination.

15. TAXES. No taxes imposed with respect of the sale of the products or services sold hereunder are included in any quotation by Seller. All applicable taxes shall be added and paid by Buyer in addition to the purchase price.

16. BUYER'S RIGHT OF TERMINATION. Buyer may terminate this contract in whole or in part upon notice in writing to Seller. Seller shall thereupon cease work and transfer to Buyer title to all completed and partially completed products and to any raw materials or supplies acquired by Seller especially for the purpose of performing this contract, and Buyer shall pay Seller the sum of the following:  
(1) the contract price for all products which have been completed prior to termination;  
(2) the cost to Seller of the material or work in process as shown on the books of Seller in accordance with the accounting practice

consistently maintained by Seller plus a reasonable profit thereon, but in no event more than the contract price;  
(3) the cost f.o.b. Seller's plant of materials and supplies acquired especially for the purpose of performing this contract; and  
(4) reasonable cancellation charges, if any, paid by Seller on account of any commitment(s) made hereunder.

17. SELLER'S RIGHT OF TERMINATION. In addition to the other rights of termination provided for in this contract, and if this contract is made pursuant to any governmental rule or regulation, plan, order or other directive, upon the directive, effected or impaired termination thereof, Seller shall have the option of canceling this contract in whole or in part.

18. WAIVER. Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.

19. DELIVERY. Unless otherwise agreed to in writing by the Seller, the Buyer hereby agrees to take delivery of the materials on this order within the later of thirty (30) days after the wanted date shown on the face of the order or within thirty (30) days after notification, oral or written, that the materials are ready for shipment. In the event that the Buyer does not arrange to take delivery of the materials in accordance with this Contract, Seller, at Seller's option, may:  
(a) invoice the Buyer for the materials less freight if applicable; store the material in Seller's yard for a period not to exceed sixty (60) days from the date of invoice; charge a storage fee not to exceed 5% per month or fraction thereof of the selling price of the stored materials; add any applicable price increases listed on the face of the order; charge for any repair work to protective coatings harmed by weathering while such material is being stored; and charge applicable freight when shipment to the Buyer is made. Materials remaining in storage after sixty (60) days from the invoice date shall become the property of the Seller for disposition at the Seller's discretion. In that event, Buyer shall not be liable for the invoice price of the materials, but shall be liable for the storage fee and any repair work to protective coatings; or  
(b) cancel the order and invoice the Buyer for cancellation charges, which shall be 25% of the selling price of the materials if the materials are standard, in-stock material, or the full selling price if the materials are special or nonstandard in nature and were especially fabricated for the Buyer.

20. PERIOD OF LIMITATIONS. Buyer and Seller agree that any action by Buyer against Seller relating to this contract or the products sold hereunder, including, without limitation, any action for breach of contract or warranty, or otherwise in connection with the products sold under this contract, must be commenced by Buyer against Seller within one year after the cause of action therefore accrues or one year of delivery of the products sold hereunder, if less.

21. CONFLICTING PROVISIONS OFFERED BY BUYER. Any terms and conditions of any purchase order or other instrument issued by the Buyer, in connection with the subject matter of this document, which are in addition to or inconsistent with the terms and conditions expressed herein, will not be binding on Seller in any matter whatsoever unless accepted by Seller in writing.

22. SEVERABILITY. In case any provision of this contract shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

23. APPLICABLE LAW. This contract shall be governed by, and construed and enforced in accordance with, the laws of Ohio. Buyer and Seller specifically agree that any legal action brought relating to this contract shall be brought and tried exclusively in the federal district court in Cincinnati, Ohio, or, in the absence of jurisdiction, the Butler County Court of Common Pleas in Hamilton, Ohio.

REV. 03/15