

# FORTRESS Protective Buildings PURCHASE ORDER TERMS AND CONDITIONS

## 1. The Parties and Controlling Terms.

- a. Entities of Seller and FORTRESS Protective Buildings LLC (“Buyer”) are set forth on the purchase order issued by Buyer (“Purchase Order”).
  - b. By selling goods and/or services to Buyer, Seller agrees that the Purchase Order and these Terms and Conditions constitute the parties’ agreement as to the subject of the Purchase Order (this Agreement”) and apply to Buyer’s subsequent purchase orders to Seller. Any modifications to this Agreement must be in writing and signed by Buyer. These Terms and Conditions supersede any terms and conditions in any other form including but not limited to those which are printed, on Seller’s internet site, contained in acknowledgement communication(s), or included in any proposal.
- ## 2. Independent Contractor.
- Seller is being retained by Buyer as an Independent Contractor to provide certain goods and/or services pursuant to Purchase Order. As such, Seller maintains control over the manner of its performance and its employees and is the principal for its agents, subcontractors, and consultants, if any.
- ## 3. Changes.
- Buyer may request changes or additions at any time and such changes must be made by an authorized, designated Buyer representative in writing. If such changes result in an increase or decrease in cost or time required for performance, the Purchase Order will be adjusted accordingly with a change order.
- ## 4. Compliance with Applicable Laws.
- The term “Applicable Law” shall mean, without limitation, any law, statute, rule, regulation, order, or ordinance of the United States, or any state, municipality, political subdivision, administrative body, or court thereof, as well as the laws of any legal jurisdiction, including but not limited to any sovereign country, any state, province or other political subdivision or court thereof, any governmental agency, or authority of any country, including, without limitation, laws and regulations pertaining to import, export, re-export, sales, anti-corruption labor, wages, hours, equal opportunity and other conditions of employment, the environment, safety, taxes, fees, licenses, and permits, applicable to the location from which goods and services originate or where goods and services are provided. Seller agrees to comply with all Applicable Laws which in any way, directly or indirectly affect the price, production, use, classification, handling, storage, sale, or delivery of goods and/or services covered by this Purchase Order. In addition, Seller shall furnish Buyer with such certification as may be required by such Applicable Laws. Seller shall defend and save Buyer harmless from any and all loss, damages, or costs (including reasonable attorney fees and claim expenses) by reason of any alleged violation of any Applicable Laws by Seller.
- ## 5. Pricing, payment.
- Unless otherwise provided elsewhere in the Purchase Order, prices for goods and services made the subject of the Purchase Order are stated in U.S. dollars, include all applicable taxes and other such fees, and are not subject to any increase for the duration of the Purchase Order. Buyer shall not be billed at prices higher than that stated on this Purchase Order unless authorized by a purchase order change order issued and signed by Buyer. Seller represents that the price charged for the goods or services covered by this Purchase Order is the lowest price charged by Seller to buyers of a class

similar to Buyer under a condition similar to those specified in this Purchase Order, and that prices comply with applicable government regulations in effect at the time of quotation, sale or delivery. Payment will be made within ninety (90) days from the date of both Buyer’s receipt of an invoice and receipt and acceptance of goods and services, as applicable. Invoice should be directed to FORTRESS Protective Buildings LLC, 3330 Oakwell Court, Suite 100, San Antonio, TX 78218, accountspayable@bakerrisk.com. Payment of invoices does not equate to acceptance of goods or services, and invoices will be subject to adjustments for failure of Seller to comply with these terms, shortage in shipments, or defects in goods and/or services received. Payment and/or acceptance of goods or services does not relieve Seller of responsibility for any deviation from the requirements of, or other failure to perform in accordance with, the terms of this Agreement and the applicable Purchase Order.

6. **Taxes.** Seller is responsible for the collection and reporting of all applicable transaction taxes, such as sales, use, withholding, value added, or similar taxes associated with the sale of goods and/or services made the subject of the Purchase Order, and will remit such taxes to the appropriate taxing jurisdiction. Transaction taxes are in addition to established prices and will be shown as a separate line item on the invoice. If tax withholding is required by Applicable Law, Buyer will adhere to such tax withholding requirements.
7. **Time of Performance.** TIME IS OF THE ESSENCE for the avoidance of substantial loss to Buyer, and Seller acknowledges that the deadlines for delivery or performance specified in a Purchase Order are critical. Seller’s failure to meet any deadline without Buyer’s written consent constitutes a material breach. In the event of delay or anticipated delay from any cause, Seller will immediately notify Buyer in writing of the delay and its approximate duration, and Seller will undertake to shorten or make up the delay by all means. In the event that Buyer determines that Seller will be unable to meet any deadline, Buyer may pursue the remedies set forth in the Default and Termination for Cause section, without providing Seller a cure period.
8. **Inspection and Acceptance.** Notwithstanding prior payment or inspection at Seller’s facility, all goods will be subject to final inspection and acceptance by Buyer at its designated location. Acceptance of goods will not alter or affect the warranties set forth herein. If goods or services received do not conform to the Purchase Order or if more than the quantity ordered is shipped, Company may, at its option: (a) reject and hold rejected goods for Seller’s instructions and at Seller’s risk; (b) return rejected goods to Seller at Seller’s expense and require correction of goods or services; or (c) request an equitable price reduction for acceptance of the goods or services, and failing agreement on said price reduction, pursue option (a) or (b).
9. **Warranty.** This warranty may be transferred or assigned to the owner of any improvement in which the goods or services are incorporated by or through Buyer.
  - a. Performance. Seller warrants that it: (i) possesses all necessary expertise, facilities, equipment, personnel, and operations suitable to provide the goods or perform the services; and (ii) will meet all specifications, requirements, standards, and other obligations and deadlines specified by Buyer or required by Applicable Law.
  - b. Goods and Services. Seller expressly warrants and guarantees that for a two (2) year period following receipt and acceptance by Buyer, the goods or services shall be: (i) free from defects in fabrication, fabrication design, materials and workmanship; (ii) new, unused, and undamaged; (iii)

satisfy the requirements of Applicable Law; and (iv) in full conformity with Buyer's specifications, drawings and data, and/or Seller's samples previously approved by Buyer, and that items furnished hereunder are merchantable and will be fit for the particular use intended by Buyer. Seller further warrants that none of the goods or services infringes, violates, or constitutes a misappropriation of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights, or trademarks of any person or entity.

- c. Assignment of Additional Warranties. In the event Seller is not the manufacturer of the goods, Seller will obtain assignable warranties for the goods from its vendors, which it will pass-through or assign to Buyer and/or its designee, and Seller will cooperate with Buyer and/or its designee in the enforcement of such warranties. If no pass-through or assignment is made, Seller will assume the responsibility of the warranty. If required by Buyer, Seller will supply satisfactory evidence of the origin, composition, manufacture, kind, and quality of the goods.
- d. Warranty Remedies. Seller will correct any defects or deficiencies in its Work as soon as possible, and no later than 30 days after receiving notice of a defect or deficiency, at no cost to Buyer or the owner of improvements in which the goods and/or services have been incorporated, said correction subject to acceptance or rejection by Buyer. Seller shall further be liable for all losses, costs, and expenses incurred as a result of the breach by buyer and the owner of the improvements. If Buyer believes that the provision of Work has been so deficient that timely and proper correction is not feasible, Buyer may (in addition to any other remedies) immediately terminate the Purchase Order in whole or in part and/or remedy the deficiency itself (or utilize a third party to do so) and charge Seller with the cost of correction and other costs incurred, including but not limited to removal, reinstallation, manufacturing, labor, access, and shipping costs.
- e. Buyer Equipment: If Buyer's equipment, tools, or products ("Equipment") are delivered to Seller, Seller will bear the entire risk of any damage to or loss, theft, or destruction of the Equipment from any cause whatsoever from the time delivered to Seller until returned to Buyer. During such time, Seller will maintain all-risk property insurance on the Equipment.
- f. Survival. Seller agrees that this warranty shall survive receipt and acceptance of the goods and/or services and the expiration or early termination of this Agreement. Seller will indemnify, defend, and hold harmless Buyer from and against all liability for loss, damage or injury to persons or property in any manner, either arising out of failure of the goods and/or services supplied under this Purchase Order to meet such warranties or otherwise incident to the performance of this Purchase Order, such indemnification to survive the receipt and acceptance of goods and services, and expiration or termination of this Agreement.
- 10. Title, Shipment, and Risk of Loss.** Seller warrants clear title to the goods when delivered to Buyer, free from any and all liens or other encumbrances. At its expense and risk, Seller is responsible for properly packing the goods for transportation and safely loading and correctly stowing the goods for transport on the vehicle designated by Seller at the location designated by Buyer. Risk of loss will transfer to Buyer as defined by Incoterm CIP (Named Place), Incoterms 2020, which requires Seller to clear the goods for export, provide a commercial invoice and packing list, and comply with any documentary instructions of Buyer during the shipping process." Title will transfer at Buyer's designated location,

upon Buyer's receipt of goods and payment of invoice. Receipt, acceptance, and payment by Buyer of the goods or services at the designated location, even after inspection, shall not relieve Seller of responsibility for any deviation from the requirements of the specifications, any warranty obligation, or Seller's failure to perform in accordance with the terms of this Agreement and the applicable Purchase Order.

- 11. Indemnity.** Seller shall indemnify, defend and hold harmless Buyer, its owners, officers, directors, shareholders, members, employees, representatives, subsidiaries and affiliated companies, (collectively "indemnitees") from and against all liabilities, costs, claims, penalties, forfeitures, causes of action, suits and the costs and expenses incident thereto (including costs of defense, settlement, and attorneys' fees for attorneys either in the employ of or independently retained by Indemnitees), which indemnitees may suffer, incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction, loss or damage to any property, real or personal, contamination of or adverse effect on the environment, or violation or alleged violation of Applicable Law, caused by or resulting from the negligence or other acts or omissions of Seller or Seller's subcontractors and those for whom Seller may be responsible under this Agreement, or the representatives, agents, employees or invitees of any of them, as a consequence of or in any manner connected with performance of this Agreement. This indemnification provision is in addition and cumulative to any other right of indemnification or contribution which any of the indemnitees may have at law, in equity, or otherwise, and will survive completion or early termination of this Agreement.
- 12. Confidentiality and Publicity.** Seller shall, both during and subsequent to work performed hereunder, keep confidential any technical or other information of a confidential nature, including knowledge of Buyer's projects, data, photos (conventional or digital), maps, reports, drawings, specifications, records, information on Buyer's general activities, and any other information not publicly disclosed relating to Buyer's business, which Seller may acquire through performance under this Agreement, the Purchase Order, or otherwise. Seller shall not disclose such information in any manner without Buyer's express written permission. If any of the items mentioned here are requested from Seller by a Court of Law, Seller is required to give Buyer immediate notice of such request and no less than three (3) days' notice prior to releasing any covered item to the Court so that Buyer may defend against the request. Buyer shall be entitled to pursue all available remedies against Seller for breach of this provision, both at law and at equity, without bond.
- 13. Ownership of Documents.** All drawings, photos, specifications, calculations, computer programs, estimates, and other documents furnished by Buyer to Seller or produced by Seller under this Purchase Order and Agreement are Buyer's property and shall be delivered to Buyer upon request. If any of the items mentioned here are requested from Seller by a Court of Law, Seller is required to give Buyer immediate notice of such request and no less than three (3) business days' notice prior to releasing items to the court so that Buyer may defend against the request, as necessary. Buyer shall have the right to disclose or use the documents in any manner it wishes without limitation. Seller agrees that any work product delivered hereunder shall be prepared as a work made for hire for the benefit of Buyer, unless otherwise stated in the Purchase Order. Further, Seller agrees to assign and does

hereby assign all copyright in such works, unless otherwise stated in the Purchase Order.

14. **Patents.** Seller undertakes and agrees to indemnify and defend, as described above in **Indemnity**, at Seller's own expense, all suits, actions or proceedings, in which Buyer, or any of Buyer's vendees, or the owners or users of any of Buyer's products or services in which Seller's goods are incorporated, are made defendants for actual or alleged infringement of any United States or foreign letters patent resulting from the possession, use or sale of the items purchased hereunder, and further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suits, actions, or proceedings against such defendants therein.
15. **Insurance.** Seller shall maintain at all times the following minimum insurance, at Seller's expense, in compliance with all applicable laws and satisfactory to Buyer:
  - a. Workers Compensation Insurance – statutory limits, and Employers' Liability Insurance –limit of \$100,000 each occurrence, both coverages to apply to liability as applicable under any state or federal statute or through any common law process
  - b. Business or Commercial Automobile Liability Insurance – combined bodily injury and property damage limit of \$500,000 each occurrence
  - c. Commercial General Liability Insurance – combined bodily/personal injury and property damage limit of \$500,000 each occurrence
  - d. Any other insurance Buyer may require, as set forth in the Purchase Order.Seller agrees to waive and will require its insurers to waive any right of subrogation or recovery it may have against Buyer. All required policies shall require that the insurance shall not be cancelled, or the limit of liability reduced by endorsement, unless the carrier shall give Buyer 30 days' prior written notice. Seller shall forward insurance certificate to Buyer prior to delivery of goods and/or services. Failure to secure the insurance coverage, or the failure to comply fully with any of the insurance provisions of this Agreement, or the failure to secure such endorsements on the policies as may be necessary to comply with the provisions of this Agreement, shall in no way act to relieve Seller from its obligation under this Agreement.
16. **Liens.** Seller shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work called for by the Purchase Order. Seller shall not be entitled to receive final payment from Buyer until Seller furnishes evidence satisfactory to Buyer of full payment of such indebtedness. Buyer shall not permit any lien, encumbrance, or charge to attach to the goods or the premises incorporating the goods; but if any does so attach, Seller shall promptly procure its release, and defend and indemnify Buyer and the owner of the premises against all costs, damages, and expenses incident thereto.
17. **Termination.** Buyer may terminate this Agreement at any time by giving written notice to Seller. After receiving written notice of termination, Seller will immediately cease performance pursuant to the instructions in the notice of termination. In the event of such a termination, Buyer shall pay Seller for that portion of Seller's services satisfactorily performed by Seller to the date of termination.
18. **Default and Termination for Cause.** Buyer's right to require strict performance by Seller shall not be affected by any waiver, forbearance of course of dealing. If Seller or any Seller subcontractor necessary for the performance of the Purchase Order breaches any provision hereof, or becomes insolvent, enters bankruptcy, receivership or other like

proceeding (voluntarily or involuntary), or makes an assignment for the benefit of creditors, Buyer shall have the right, in addition to any other right it may have hereunder or by law, to terminate the Purchase Order by giving Seller written notice, whereupon: a) Buyer shall be relieved of all further obligation hereunder, except to pay the reasonable value of Seller's prior performance, but not more than the Purchase Order price; b) at Buyer's option, upon written notice to Seller, title to any product(s) of Seller's work whether completed or partially completed, as well as all materials prepared, procured or set aside by Seller for use in the work, shall vest in Buyer, and Buyer may enter Seller's premises and remove the same there from; and c) Buyer may, at its option, complete performance of the work, in which event, Seller shall be liable to Buyer for all cost incurred by Buyer in the course of completing such performance in excess of the Purchase Order price (whether or not Buyer exercises its option in clause b).

19. **Access and Audit.** In order to assess Seller's work quality and compliance with the Purchase Order, Seller will permit Buyer reasonable access to all locations where work is performed in connection with the goods or services provided for in the Purchase Order and Seller's books and records relating to the Purchase Order.
20. **Safety.** Seller acknowledges that safety is of prime importance to Buyer and Seller shall cooperate with Buyer in efforts to prevent injuries to personnel and to comply with all delivery site and Buyer safety policies and applicable safety rules and regulations. Nothing herein shall be construed so as to create a responsibility to or liability for Seller's employees, agents, representatives or independent contractors by Buyer.
21. **Notices.** Notices must be in writing and shall be deemed to have been given: (a) when received, if delivered in person or by a courier or a courier service; (b) three business days after being deposited in the mail, certified or registered postage prepaid; or (c) on the date of transmission (or the next business day if the date of transmission is not a business day, or the time is after 5:00 pm Central), if sent by e-mail (so long as a copy of the notice is also sent by mail as described herein). Notices to Seller are to the location set forth in the Purchase Order. Notices to FORTRESS should be to: [contracts@fortressprotectivebuildings.com](mailto:contracts@fortressprotectivebuildings.com)
22. **Enforceability/Interpretation.** This Agreement: (a) is between Seller and Buyer only, binds their heirs and assigns, and there are no third-party beneficiaries to this Agreement, unless otherwise stated; (b) constitutes the entire agreement of the parties, supersedes all prior understandings, and may be amended or assigned only by written agreement of both parties; (c) may be executed by scanned or electronic signature and in one or more counterparts, each of which shall be deemed to be an original for all purposes; and (d) shall be governed by and construed in accordance with the laws of the State of Texas, with venue for any dispute related to this Agreement or the Services to be in the courts of Bexar County, Texas. Titles, headings, and numbers are for organizational purposes only and may not fully describe the information that follows. If any provision of this Agreement is held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision, and this Agreement will be construed as close as reasonably possible to preserve the intent of the parties. Any provision which by its nature should survive the expiration or early termination of this Agreement does so survive.