

TERMS AND CONDITIONS

10/21

"H&H" shall mean Hoffman & Hoffman, Inc., and its officers, employees, and agents. **"Buyer"** shall mean the person or entity entering into this Agreement to purchase goods and/or services.

1. Controlling Terms & Conditions: This Agreement, upon Buyer's acceptance, is limited to the terms and conditions stated herein, despite any additional or conflicting terms and conditions contained in any purchase order, any other document presented by Buyer, or any contract document between Buyer and any third-party (i.e., owner, other contractor, etc.), all of which additional or conflicting terms are hereby rejected by H&H. No waiver of, or modification to, these Terms and Conditions shall be valid unless made in writing and signed by an authorized representative of H&H. H&H salespeople are not authorized to waive or modify any Terms and Conditions. The terms of any written proposal / quote made by H&H ("proposal") and these Terms and Conditions shall constitute the entire agreement of the parties.

2. Acceptance: Any H&H proposal expires if not accepted by Buyer within thirty (30) days from the date of the proposal. Prices are at all times subject to escalation. Typographical and clerical errors in quotations, orders and acknowledgments are subject to correction. Buyer is deemed to have accepted any H&H proposal, including these Terms and Conditions, when Buyer either (a) receives and retains an acknowledgement from H&H without written objection within ten (10) days, (b) accepts delivery of all or any part of the goods ordered, (c) provides to H&H delivery dates, shipping instructions, or other instructions evidencing acceptance, or (d) otherwise executes or assents to any proposal or these Terms and Conditions. If Buyer accepts any proposal, Buyer's order shall be deemed acceptance of the proposal subject solely to H&H's terms and conditions. If Buyer's order is expressly conditioned upon H&H's acceptance or assent to terms and/or conditions other than those stated herein, return or acknowledgment of such order by H&H with H&H's Terms and Conditions attached or referenced serves as H&H's notice of objection to, and rejection of, Buyer's terms and as H&H's counter-offer to provide goods or services in accordance with the H&H proposal and H&H's Terms and Conditions. If thereafter Buyer does not object to H&H within ten (10) days by written notice to Legal@hoffman-hoffman.com, H&H's counteroffer will be deemed accepted by Buyer. Buyer's acceptance of all or any part of any goods ordered will constitute Buyer's acceptance of H&H's proposal subject to H&H's Terms and Conditions.

3. Terms of Payment / Taxes: Payment is due net thirty (30) days from the date of each H&H invoice to Buyer. Interest at the rate of 1 1/2% per month (or the highest interest rate allowed by applicable law, if lower) may be charged after the 30-day period until payment is received. H&H accepts credit card payments. If Buyer chooses to pay by credit card, Buyer is subject to an additional convenience fee of 3.0% of the total amount paid by credit card. Buyer shall pay all costs of collection incurred by H&H including, but not limited to, reasonable attorneys' fees, collection fees, and court costs. H&H may suspend all further services and transactions (regardless of their status) without liability if Buyer's account is more than thirty (30) days past due or if Buyer's credit, in the sole judgment of H&H, is impaired at any time. Partial invoices may be submitted for any portion of completed work and/or delivered materials. While risk of loss passes to Buyer, Seller will have a purchase-money security interest in all goods (including any accessories and substitutions) purchased under this Agreement to secure payment in full of all amounts due H&H, and the underlying proposal, together with these Terms and Conditions, form a security agreement (as defined by the UCC.) Buyer shall keep all goods purchased under this Agreement free of all taxes and encumbrances, shall not remove said goods from their original installation point and shall not assign or transfer any interest in said goods until all payments due H&H have been made. The purchase-money security interest granted herein attaches upon H&H's acceptance or acknowledgment of this Agreement and Buyer's receipt of said goods, but prior to installation. Buyer will have no rights to set off against any amounts which become payable to H&H under this Agreement or otherwise. Notwithstanding any Buyer form or document to the contrary, H&H shall not release any rights to make a lien and/or bond claim, or other claim for damages, in connection with goods purchased or services provided until H&H has obtained payment in full for such goods or services and any damages. Furthermore, Buyer is responsible to pay in full for the goods or services provided by H&H regardless of whether such goods or services are funded for Buyer pursuant to any extraneous contract and/or by an applicable project owner or contractor. Unless otherwise agreed by H&H in writing, Buyer shall pay to H&H, in addition to the contract price, all sales, use, excise, privilege or other taxes imposed by any local, state or federal taxing authority payable in connection with the goods or services furnished.

4. Shipments / Claims: All shipments of goods are at Buyer's risk, f.o.b. factory, or if shipped from another location, f.o.b. point of shipment, with charges either allowed, added to invoice, or collected as noted. Any claims for damage or shortage or loss in transit must be filed by Buyer against the applicable carrier. If requested, H&H will reasonably assist the Buyer when making its claim for damages and/or losses while in transit. Claims against factory shortages will not be considered unless made within sixty (60) days after Buyer's receipt of the goods.

5. Approval: H&H shall not be liable in any way should any third party (such as a project architect, engineer, owner, etc.) fail to accept or approve equipment ordered by Buyer. H&H cannot guarantee to meet or equal specifications written around another make of equipment different than that purchased by Buyer.

6. Warranties and Liability: Upon H&H's receipt of payment in full for all amounts owed, H&H extends to Buyer the manufacturer's warranty (a copy of which is available upon request), and manufacturer's warranty in lieu of any warranties contained in any applicable project contract, conditions, plans, or specifications. H&H ITSELF MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, IMPLIED WARRANTIES OF DESIGN OR FITNESS FOR A PARTICULAR PURPOSE. H&H SHALL HAVE NO LIABILITY FOR ANY DIRECT DAMAGES BY REASON OF FAILURE OF THE EQUIPMENT TO OPERATE OR FAULTY OPERATION OR MISUSE OF THE EQUIPMENT, AND UNDER NO CIRCUMSTANCES SHALL H&H BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR LIQUIDATED DAMAGES OR LOSSES, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, INCOME, PROFIT OR PRODUCTION, LOST DATA, SPOILAGE, DELAY, OR INCREASED COST OF OPERATION. SAID EXCLUSIONS APPLY EVEN IF H&H HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SUCH POSSIBLE DAMAGES WERE REASONABLY FORESEEABLE. H&H does not commit that the equipment sold will effectively control, eliminate, kill or prevent the spread of COVID-19 or other mold, bacteria, virus, or pathogen, and H&H expressly disclaims that the product is fit for this purpose. H&H shall have no liability or duty to defend or hold harmless Buyer or any other third-party with respect to any claim, injury, loss or damage arising from or in connection with COVID-19.

7. Design and Workmanship: Buyer acknowledges that H&H is not responsible for the design of goods or services purchased and did not participate in any project design in connection with such goods or services. (a) Goods shall be fabricated in accordance with the contract drawings and specifications furnished by the Buyer and shop drawings approved by Buyer or its representative. (b) H&H shall not be responsible for the suitability, adequacy or legality of use of any designs, plans and specifications, and the Buyer shall indemnify H&H for any loss, damages and expenses incurred by or charged against H&H by reason of any alleged patent or copyright infringement, personal injury or property damage allegedly arising out of the use of designs, plans, and specifications furnished by Buyer for the goods. (c) Once shop drawings are approved by Buyer, Buyer shall reimburse H&H for all expenses resulting from changes thereto. Buyer shall compensate H&H for any and all extra work requested by Buyer and performed by H&H outside the limits of H&H's proposal. If H&H and Buyer do not reach agreement as to compensation and any change to the project schedule resulting from such extra work, H&H shall not be responsible for the extra work.

8. Limitation of Remedy: H&H shall have no liability for any damage caused by negligence, accident, misuse, improper storage, improper installation, improper service, maintenance or operation of equipment by Buyer or any third party. To the extent H&H is liable to Buyer under any legal theory (whether under warranty, negligence, strict liability or contract), Buyer's sole and exclusive remedy is limited to one of the following, which H&H shall elect in its sole and absolute discretion: (a) repair or replacement of purchased equipment or its parts by H&H or its duly authorized representative or (b) refund of the purchase price. In no event shall H&H's liability exceed the purchase price paid by Buyer under this Agreement, and Buyer waives all other remedies at law or in equity. Furthermore, Buyer waives any claim with respect to quantity or quality of goods or services purchased, unless Buyer notifies H&H in writing within ten (10) days of the date Buyer discovered, or by reasonable inspection should have discovered, the basis for such claim. Under no event shall H&H owe any duty or have any obligation whatsoever to any customer or client of Buyer or to any other third party.

9. Hazards: H&H is not responsible for the identification, detection, abatement, encapsulation or removal of hazardous substances, such as (without limitation) asbestos, products or materials containing asbestos, mold, fungi, mildew, or bacteria. At all times now and in the future, H&H takes no responsibility for and makes no representations or warranties concerning any existing or future hazardous substance or condition (i.e., mold) or the remedy or prevention thereof. Furthermore, Buyer has a duty to alert H&H of any known or likely potential hazards at any project site where H&H's representatives and affiliates may be present in connection with this Agreement.

10. Indemnification / Insurance: To the fullest extent permitted by law, Buyer shall indemnify, hold harmless and defend H&H and its officers, employees and agents from and against all claims, demands, liabilities, suits, judgments, awards, or expenses of any kind (including reasonable attorneys' fees and costs incurred defending such claims or demands, regardless of whether they result in legal action or are prosecuted to final judgment or award), which result or arise from Buyer's purchase, installation, or use of goods or services provided by H&H, including all claims that goods sold or guidance provided by H&H or its employees contributed to or failed to prevent or control the spread of COVID-19 or other mold, bacteria, virus, or pathogen. To the fullest extent permitted by law, the obligations of defense and indemnification set forth herein shall be binding upon Buyer no matter what the nature of the claim asserted may be (whether it be for negligence, warranty, strict liability, or otherwise) and shall be binding even if H&H is alleged or proven to have acted negligently; provided, however, that Buyer shall have no obligation to provide indemnification to H&H if the claim asserted arises in negligence and is finally adjudicated to have arisen solely from the negligence of H&H. Buyer shall also indemnify and hold harmless H&H from all liability for taxes owing in connection with Buyer's purchase of goods or services. The obligations and rights to indemnity herein shall not negate, abridge or reduce other such rights or obligations under law. This Agreement does not require Buyer to indemnify H&H for H&H's own negligent or intentional acts or omissions to the extent that doing so would violate applicable law. Buyer and H&H jointly authorize and request any court or arbitrator considering the enforceability of this paragraph to re-write this paragraph so that it requires Buyer to defend, indemnify, and hold H&H harmless to the fullest extent permitted by applicable law. Upon written request of Buyer, H&H shall only be required to name Buyer as an additional insured to the coverage types listed on H&H's standard Certificate of Insurance (available upon request). In no event does H&H waive any rights of subrogation.

11. Claims Resolution / Governing Law: Unless H&H elects otherwise, all claims and disputes between Buyer and H&H arising out of or relating to performance of any agreement or breach thereof must be decided by binding arbitration in accordance with the Construction Industry Arbitration rules of the American Arbitration Association (AAA). Demand for Arbitration must be filed in the regional office of the AAA closest to Greensboro, North Carolina, and the filing party must serve such Notice upon the other party in accordance with AAA rules. The procedural and substantive law of the State of North Carolina must apply in and to all arbitration proceedings, and Greensboro, North Carolina, is designated as the sole and exclusive venue for such proceedings. Any award arising from such proceedings shall be final and binding upon the parties and enforceable in accordance with the Federal Arbitration Act. H&H and Buyer agree that their transactions involve interstate commerce. This Agreement shall be governed by and construed solely in accordance with the laws of the State of North Carolina, without regard to principles of conflicts of laws. H&H shall have the sole and exclusive right, at H&H's sole and absolute discretion, to waive the arbitration provision and to elect to litigate any claim or dispute in a court of appropriate jurisdiction. Unless H&H elects another court of appropriate jurisdiction in H&H's sole and absolute discretion, the state courts located in Greensboro, Guilford County, North Carolina, shall be the sole and exclusive forum for any litigation between H&H and Buyer. Buyer consents to the jurisdiction of the state and federal courts located in Greensboro, Guilford County, North Carolina.

12. Delays / Penalties / Force Majeure: Delivery dates are approximate and not guaranteed. In no event and under no circumstances whatsoever will H&H be liable for any damages or expenses caused by any failure or delay in making delivery of goods or in performing services hereunder. No penalty clause or liquidated damages of any kind (for delays or otherwise) apply to H&H unless pre-approved in writing by an H&H officer. Furthermore, in no event and under no circumstances whatsoever will H&H be liable under this Agreement for any event of force majeure, including but not limited to, acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages, pandemic, and other causes beyond H&H's reasonable control.

13. Cancellations / Returns: If an order is canceled through no fault of H&H, the Buyer shall reimburse H&H for all expenses, costs, damages and losses (including lost profits) incurred by H&H in connection with the order and its cancellation. Goods may not be returned except by written permission of a representative of H&H, and when so returned, shall be subject to handling and transportation charges.

14. Equal Employment Opportunity / Affirmative Action Clause: H&H and Buyer shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

15. Government Contracts: If Buyer's purchase of goods or services is in any way connected to any federal, state, or local government project, which implicates or utilizes any Small, Minority or Disadvantaged Business incentives or qualifications (or other similar laws or regulations), Buyer represents and certifies to H&H that Buyer is performing a commercially useful function on such project. Currently, H&H does not comply with Executive Order 14042 Task Force Guidance as issued September 24, 2021 ("Guidance"). Any H&H bid/proposal is contingent upon Buyer's waiver of the requirements contained in the Guidance when applicable.

16. Trust Funds: Buyer agrees that all funds Buyer receives that result from the labor, materials, and/or equipment furnished by H&H will be considered "Trust Funds." Buyer will hold all Trust Funds in trust for the sole and exclusive benefit of H&H. Buyer will segregate Trust Funds from other funds. Buyer will account for all Trust Funds and deliver all Trust Funds to H&H. Buyer will not use Trust Funds for any purpose other than paying H&H.