

PURCHASE ORDER TERMS AND CONDITIONS

These Terms and Conditions apply to and are hereby made a part of the contract (hereinafter, the "Contract") for services, supplies, or materials (hereinafter, the "Work") identified in the purchase order (the "Purchase Order") by and between the person or entity to which the Purchase Order is addressed (hereinafter the "Seller") and Colonna's Shipyard, Inc. ("Colonna's"). The Contract consists of the Purchase Order, any documents expressly incorporated by reference therein, and these Terms and Conditions. All prior understandings, statements, or negotiations related to the Purchase Order or the Work are hereby superseded and shall be of no effect. Seller accepts the Purchase Order and these Terms and Conditions either by commencing the Work or acknowledging its acceptance of the Purchase Order.

1. **PRICE & PAYMENT:** Seller shall not be entitled to any payment in excess of the price provided for in the Purchase Order (hereinafter, the "Contract Price"), except as provided below for "Changes". If the Purchase Order includes incremental funding, Seller shall not incur charges or cause them to be incurred in excess of the incremental funding amount without the written authorization of Colonna's Purchasing Department, and under no circumstances shall Colonna's ever have any obligation to pay any amount in excess of the authorized incremental funding amount. Payment terms shall be as provided in the Purchase Order or, if none are provided, within forty-five (45) days of Colonna's approval of any Seller invoice, *provided* that, where the Work is part of Colonna's performance of its obligations to its customer or Prime Contractor (defined below), Colonna's shall not be required to make any payment to Seller until Colonna's has received payment for the Work (or applicable portion thereof) from its customer or Prime Contractor. Seller shall submit its final invoice to Colonna's within fourteen (14) days of completing the Work. Seller further acknowledges and agrees that nothing in this Paragraph 1 shall in any way relieve Seller of its guarantee/warranty obligations as set forth in Paragraph 4 of these Terms and Conditions.
2. **FACILITY ACCESS & CONDUCT:**
 - a. Colonna's agrees to permit such access into Colonna's shipyard and facilities (hereinafter, "Colonna's Facilities") as is reasonably necessary to complete the Work by the Seller and its employees, agents, representatives, suppliers, invitees and lower-tier subcontractors (hereinafter, the "Seller Parties"), provided that the Seller Parties are in full compliance with the terms of this Contract. Colonna's may, in its sole discretion, limit, delay or terminate at any time any Seller Party's access to Colonna's Facilities if the Seller Party engages in any conduct or practice that is unsafe or in violation of any of the terms of the Contract, including (but not limited to) these Terms and Conditions.
 - b. Seller and Seller's Parties shall keep their work areas reasonably clean and free of trash and debris at all times. Seller shall reimburse Colonna's for all costs incurred in cleaning up Seller's or Seller's Parties' trash or work area.
 - c. Seller and Seller's Parties shall remove all of their equipment and materials from Colonna's property within thirty (30) days of completion of the Work, or sooner, if so directed by Colonna's. Any equipment or materials left on Colonna's property in violation of this Term shall be deemed abandoned and either forfeited to Colonna's or, at Colonna's discretion, disposed of by Colonna's, with any and all costs of disposal being borne by Seller.
 - d. Seller shall comply with, and shall cause all Seller Parties to comply with, all laws, statutes, ordinances, rules, and regulations applicable to Colonna's, the Colonna's Facilities, or any Seller Parties in connection with this Contract (hereinafter the "Applicable Laws"), the Virginia Ship Repair Association's ("VSRA") Safety Regulations, and all of Colonna's environmental, health, safety, security, and workplace harassment and nondiscrimination policies and procedures (hereinafter, "Colonna's Policies"), including (but not limited to) Colonna's hearing protection program and all applicable personal protective equipment requirements. Seller warrants that it has reviewed, understands, and will comply with the VSRA Safety Regulations and Colonna's Policies and that it shall ensure that all Seller Parties have reviewed, understand, and will comply with the VSRA Safety Regulations and Colonna's Policies while present on the Colonna's Facilities. Seller acknowledges and agrees that compliance with this Paragraph 2.d. is a material term of the Contract
 - e. In addition to the foregoing, Seller shall fully comply with the letter and spirit of all applicable laws and regulations relating to the environment. Seller shall ensure that every Seller employee or other Seller Party is fully knowledgeable of his or her environmental responsibilities and the environmental implications of his or her job performance, and that every Seller Party's environmental responsibilities are met with the highest level of skill, diligence, and competence.

3. PERFORMANCE:

- a. Colonna's reserves the right to inspect the Work at any time, but its inspection or failure to inspect shall not be deemed acceptance of the Work or a waiver of its right to reject defective Work. All materials leaving and returning to Colonna's Facilities must be processed through Colonna's Receiving Department and accompanied with a shipping manifest.
- b. Seller agrees that, to the extent its Work is to be used on or for any higher-tier contract between Colonna's and its prime contractor or customer (the "Prime Contract"), the Work shall comply with all specifications and quality requirements in the Prime Contract, which are hereby incorporated into the Contract. Any conflict between the specifications or statement of work in or incorporated into the Purchase Order shall be resolved in favor of the requirements of the Prime Contract. Seller warrants that it has received a copy of the relevant portions of the Prime Contract and understands its requirements.
- c. Seller understands that time is of the essence in the performance of the Work and that any delay by Seller will impact Colonna's performance of other contracts, including (but not limited to) the Prime Contract. Seller shall provide Colonna's with written progress reports at least weekly and in accordance with any reporting instructions in or incorporated into the Purchase Order. Any overtime required to meet the schedule is Seller's responsibility except where specifically authorized by Colonna's in the Purchase Order or in a Change Order.
- d. Seller shall diligently proceed with and continue performance of the Work as directed by authorized Colonna's personnel, regardless of the pendency of any request for equitable adjustment, contract change, or dispute.

4. GUARANTEE: In addition to all applicable implied warranties of fitness, merchantability, and workmanlike performance (none of which are excluded), Seller guarantees that the Work shall be free of all material defects for a period of 90 days after completion or for such longer period as required by the Purchase Order. At its sole expense, Seller shall make all reasonable efforts to assign to Colonna's all manufacturer's warranties associated with any parts or supplies provided as part of the Work and shall preserve Colonna's rights with respect to the same.

5. SUBCONTRACTING & ASSIGNMENT: Seller shall not assign or transfer any of its rights or interests under this Contract or subcontract any portion of the Work without Colonna's express written authorization. Seller shall ensure its subcontractors' compliance with all of these Terms and Conditions.

6. CHANGES:

a. No term or requirement of the Contract may be changed or modified except in a written instrument signed by authorized representatives of both parties.

b. The Contract Price, schedule, or nature, amount, or scope of the Work shall not be changed or modified except by a written "Change Order" signed by the Parties' authorized representatives, as provided for in this Section.

c. For any proposed Change Order, the Parties shall agree to a reasonable adjustment to the Contract Price or delivery schedule based on the effect of the proposed Change Order on the cost of or the time required for performance of the affected part of the Work (hereinafter, the "Change Order impact"). Colonna's may propose Change Orders orally or in writing. Within three (3) business days after receipt of a proposed Change Order, Seller shall provide to Colonna's a written statement estimating the Change Order impact along with any supporting documentation reasonably required. If Seller identifies conditions or circumstances requiring a change to the Contract Price or schedule, it shall provide Colonna's with written notice through a request for contract change or condition found report within twenty-four (24) hours of discovery of the condition or circumstance. Failure to provide such notice shall be deemed a waiver of Seller's right to any adjustment to the Contract Price or schedule for the condition or circumstances not timely disclosed.

d. Any and all requests for equitable adjustment of the Contract Price must be submitted by Seller to Colonna's, in writing, within fourteen (14) days of Seller's discovery of the circumstances giving rise to its request for equitable adjustment, and failure of Seller to comply with this fourteen (14)-day submission deadline shall constitute ground for Colonna's to deny or dismiss the request as being untimely made.

e. Nothing in this Paragraph 6 shall preclude or limit Colonna's from seeking from Seller and Seller being obligated to pay to Colonna's appropriate damages for delay or disruption occasioned by Seller's failure timely to perform the Work in those instances where Seller is responsible for any such delay or disruption (with the timeliness of any such performance being that which is, in Colonna's sole discretion, reasonable under the circumstances) and that same delay or disruption has not been excused or otherwise accounted for by a written Change Order entered into by the Parties in accordance with the terms of this Paragraph 6.

7. TERMINATION:

- a. The Contract may be terminated by Colonna's at any time prior the Work being completed under the following conditions:
 - (1) If Seller shall fail to perform, in a timely manner (as specified by the Contract documents or, if not so specified, in Colonna's sole discretion as to what is reasonable under the circumstances), any of its material obligations under the Contract, to specifically include these Terms and Conditions.
 - (2) If Seller shall fail to remedy any default of any of its obligations under the Contract, to specifically include these Terms and Conditions, after having been given written notice of such default by Colonna's and Seller failing to cure the default so noticed within five (5) work days after such notice was provided to Seller.
 - (3) For any reason, provided that Colonna's has provided Seller thirty (30) calendar days' advance written notice that Colonna's is terminating the Contract for its convenience.
- b. Any termination under this Paragraph 7 shall be without prejudice to any and all remaining rights of Colonna's under the Contract, to include these Terms and Conditions, and to specifically include Colonna's rights to pursue any remedies available to it in equity, at law, or otherwise.
- c. Upon termination pursuant to Subparagraph 7 (1) or (2), above, Colonna's shall have the right to hold Seller accountable for any costs or damages incurred or suffered by Colonna's as the result of Seller's breach of its obligations under the Contract and/or its failure to cure, in a timely manner (as specified by the Contract documents or, if not so specified, in Colonna's sole discretion as to what is reasonable under the circumstances), any default properly noticed to Seller by Colonna's. Colonna's shall specifically have the right to back-charge or otherwise recoup its reasonable expenses and costs incurred in completing the Work following Seller's termination, whether completed by Colonna's or by another party or parties engaged by Colonna's to complete it.
- d. Upon termination pursuant to Subparagraph 7 (3), above, Colonna's sole liability to Seller shall be limited to Colonna's paying for the Work actually performed by Seller under the terms of the Contract prior to the effective date of termination.

8. INDEMNIFICATION: Seller hereby agrees, to the fullest extent permitted by law, to indemnify, advance expenses, defend and hold harmless Colonna's and its directors, officers, agents, representatives, employees, affiliates, invitees, contractors, subcontractors, customers, vendors, or clients, (the "Indemnified Parties") from and against any and all actual, threatened or completed claims and demands, actions, suits, arbitrations, proceedings, investigations, losses, liens, costs, settlements and judgments of any kind or nature whatsoever (hereinafter, collectively, "Proceedings"), of or by anyone whomsoever, including, without limitation, any of the Seller Parties or any third party, including reasonable attorney's fees and expenses incurred in defending against Proceedings, for death of or injury to persons or damage to property (including property owned, leased or operated by or under the care and/or custody of Colonna's), including pollution liability, and for civil or administrative fines and penalties, in any way resulting from or arising out of the Work and actually or allegedly caused, directly or indirectly, by: (a) any act, omission or negligence of any of the Seller Parties, or (b) any failure of any of the Seller Parties to comply with these Terms and Conditions, Colonna's Policies, or any Applicable Laws or regulations.

9. LIMITATION OF LIABILITY: IN NO EVENT SHALL COLONNA'S BE LIABLE TO SELLER, SELLER PARTIES, OR THIRD PARTIES FOR LOST PROFITS OR BUSINESS, LOSS OF RENTALS, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER SPECIAL DAMAGES, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER THEORY OF LAW AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR, IN ANY EVENT, FOR ANY AMOUNT EXCEEDING THE AMOUNT OF COLONNA'S COLLECTIBLE INSURANCE COVERAGE ANSWERING FOR OR RESPONDING TO ANY CLAIM, LOSS, OR RISK RELATING TO OR ARISING OUT OF THE WORK OR ANY PARTY'S OBLIGATIONS UNDER THIS AGREEMENT

10. DISPUTES: The parties agree that any disputes between Seller and Colonna's arising under the Contract shall be resolved as follows:

- a. The Parties shall first endeavor to resolve the dispute through informal good-faith negotiation between nonlawyer representatives of Seller and Colonna's, respectively.
- b. If the foregoing attempt to resolve the dispute through nonlawyer representative negotiation is unsuccessful, then the Parties shall next attempt to resolve the dispute by referring it to mediation, for which the Parties will share the costs equally. Mediation shall be a condition precedent to either Party having the right to demand arbitration or institute litigation against the other.

- c. Any arbitration of a dispute arising under the Contract shall be initiated by a demand to the American Arbitration Association and shall be conducted under its Rules, with any hearing to be held in Norfolk, Virginia.
- d. Either Party may at its election choose to resolve any dispute arising under the Contract through litigation, with such litigation being only in the Circuit Court for the City of Norfolk, Virginia or in the United States District Court for the Eastern District of Virginia, Norfolk Division. Each Party consents to both the jurisdiction and venue of those courts.
- e. In any arbitration or litigation arising under the Contract, the substantially prevailing Party shall be entitled to its reasonable attorneys' fees and the costs of such litigation or arbitration, to specifically include the cost or fees incurred by any expert witnesses retained for the purposes of that litigation or arbitration by the substantially prevailing party.

11. INSURANCE: Seller shall maintain, at a minimum, the following insurance coverages, naming Colonna's an additional insured on a primary and non-contributory basis, including cross liability and separation of interests provision, for each General Liability, SRL, Automobile, and Umbrella with full waiver of subrogation, and shall provide a Certificate of Insurance demonstrating such coverage prior to start of any Work and/or access to Colonna's facility, whichever shall occur first. Seller shall promptly advise Colonna's with respect to any material changes concerning the required insurance described herein, including but not limited to any failure to renew and/or cancellation of said insurance.

- a. Coverage/Minimum Limits
- b. Comprehensive and/or marine general liability and, if the Work is on board any vessel or involves parts, equipment, or assemblies that will be installed on a vessel, Ship Repairer's Liability coverage sufficient to cover all aspects of the Work with combined bodily injury and property damage limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and Products and completed operations \$2,000,000. Personal injury coverage with limit of \$1,000,000.
- c. Comprehensive automobile liability insurance with coverage to include owner hired and non-owned vehicles, with combined bodily injury and property damage limit of \$1,000,000 per occurrence.
- d. Worker's Compensation and Longshore and Harbor Worker's Compensation insurance with limits of liability conforming to the statutory requirements of the Commonwealth of Virginia and the United States of America, and no less than \$1,000,000. If work is to be accomplished on any vessel, dry dock, or pier, benefits under the Longshore and Harbor Worker's Compensation Act must be shown on the Certificate of Insurance. Seller shall maintain marine employer's liability insurance, endorsed to its WC and USL&H insurance, providing coverage for Jones Act and maintenance and cure liability. And if Seller owns or operates any vessel in connection with the Work, it shall maintain Protection and Indemnity coverage for that vessel in an indemnity amount of no less than \$1,000,000 per occurrence, naming Colonna's as an additional insured. All such insurance shall waive subrogation against Colonna's and be endorsed to list Colonna's as an 'Alternative Employer'.
- e. If the Work involves engineering, design, survey, inspection, drawing preparation or the rendering of any other professional services, Professional Liability Errors and Omissions insurance in a minimum indemnity amount of \$1,000,000 per claim.
- f. Excess or umbrella liability insurance over all of the above coverages with a limit of at least \$4,000,000 over and above the underlying coverage limits.
- g. Seller's insurance pertaining to or potentially answering for claims associated with the Work shall contain no provision, endorsement, or modification that would make Seller's insurance coverage excess over any other available insurance, to specifically include Colonna's insurance
- h. Colonna's reserves the right to deny access to Colonna's Facilities pending adequate assurance of Seller's compliance with the above insurance requirements.

12. LIENS: Seller shall provide the Work free of all liens, claims, charges and encumbrances, legal or equitable. Seller understands that Colonna's is not obtaining the Work from Seller on the credit or account of any vessel or customer and no obligation hereunder shall give rise to any lien or encumbrance on any vessel or other property of any of Colonna's customers or Prime Contractors.

13. FLOW-DOWN CLAUSES: If the Work is under a Prime Contract that includes any contract clauses that Colonna's is required to flow down to Seller by law or contract, the flow-down clauses applicable to the Contract are incorporated by reference in the Purchase Order or attached hereto, and if so incorporated or attached, are hereby made a part of the Contract. Unless specified otherwise in the attachment or Purchase Order, each such clause shall be interpreted so as to permit

Colonna's to comply with its obligations under the Prime Contract and, where appropriate and not in conflict with that objective, references to the "Government" shall mean "Colonna's" and references to "Contractor" shall mean "Seller".

I agree to the Terms and Conditions set forth in this document, and understand that the provisions herein are applicable to all business dealings with Colonna's Shipyard Incorporated.

Company _____

Name _____

Title _____

Signature _____ Date _____