



ADAMS CAMPBELL CO

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Terms and Conditions to all Purchase Orders by Adams Campbell/Accent Ceilings and Walls ("Purchaser")

1. **Scope of Work.** The vendor, supplier and/or subcontractor ("Supplier") shall procure, order, and furnish all materials, labor, hardware, and equipment and perform all services necessary for the completion of the work described in the Purchase Order, the contract between Purchaser and its client ("Client Contract"), and in any specifications, drawings, and other descriptive data pertaining to Supplier's work.
2. **Flow Down.** Supplier assumes toward Purchaser all obligations, rights, duties, and redress that Purchaser assumes toward Client and others under the Client Contract.
3. **Examination of the Site.** Supplier acknowledges that it has carefully reviewed the Scope of Work, including all drawings and specifications pertaining to the work, and has fully acquainted itself with all visible site and local conditions affecting the work.
4. **Contract Price.** For the satisfactory and complete performance of the work, product, or services, Purchaser shall pay Supplier the total sum set forth in the Purchase Order ("**Contract Price**"). The Contract Price includes all required labor, material, equipment, services, shipping and applicable insurance and taxes. No additional sums will be paid for any price or labor escalation for Purchase Order work, including but not limited to the cost of materials, fabrication, equipment, hardware, services or labor. Subject to Purchaser and Client approval, Purchaser will only consider written requests for an equitable adjustment to the Purchase Order if and to the extent (i) allowed, (ii) approved, and (iii) paid under the Client Contract.
5. **Changes.** Purchaser may change the work, the specifications, drawings, or other information governing the work, or the time for completion. If the change causes a material increase or decrease in the Contract Price, the parties will confer regarding a potential equitable adjustment to the Purchase Order.
6. **Schedule.** Time is of the essence. Supplier shall provide Purchaser with proposed scheduling information and shall revise its schedule as Purchaser requires to meet the overall project schedule. Once finalized, Supplier will be bound to such final project schedule. Purchaser may change the time, order, and priority of Supplier's work pursuant to Paragraph 5. Supplier shall be fully responsible for any additional costs or damages due to its failure to comply with its schedule requirements, including but not limited to delay damages incurred by Purchaser or liquidated damages assessed against Purchaser by its Client.
7. **Submittals.** The Supplier shall promptly submit for approval to the Purchaser all shop drawings, samples, product data, manufacturer's literature, and

similar submittals required by the Purchase Order or the Client Contract so as not to delay the Purchaser's performance under the Client Contract. Supplier shall be fully responsible for any additional costs due to its failure to comply with its submittal requirements.

8. **Codes and Permits.** Supplier shall obtain all necessary permits and licenses as may be necessary or required for completion of work under the Purchase Order. Supplier shall comply with all codes, laws, and regulations governing its work or services.
9. **Quality.** Supplier shall be bound by and comply with all terms and conditions in the attached "Quality Appendix for Adams Campbell Terms and Conditions," which is hereby incorporated into the Purchase Order by this reference.
10. **Shipping.** Supplier shall strictly comply with shipping instructions furnished by Purchaser. Supplier shall give Purchaser 24 hours' notice prior to delivering any materials or equipment. Supplier shall ensure Purchaser's supplied product is protected from damage, loss, and deterioration during processing and shipment.
11. **Payments.**
 - (a) Unless otherwise provided in the Purchase Order, the Contract Price shall be due 30 days after the work is finally completed and accepted, provided, that payment will not be due until Supplier delivers a release on the form provided by Purchaser and Purchaser receives payment from its Client.
 - (b) If payments are to be made monthly, Supplier shall submit a proper invoice each month for work performed. Payments (less retainage equal to the percentage retained from Purchaser under the Client Contract) shall be made to Supplier for work satisfactorily performed and accepted, no later than 14 days after receipt by Purchaser of payment from Client for Supplier's work, provided, that payment will not be due until Supplier delivers a release on the form provided by Purchaser.
 - (c) Supplier shall pay the costs of the work from its own downstream vendors and suppliers. If the Supplier fails to do so, Purchaser may, in its sole discretion and upon 24 hours' notice, pay such costs and deduct that sum from the Contract Price.
 - (d) Supplier's acceptance of final payment releases Purchaser from all claims by Supplier arising out of the Purchase Order.
12. **Insurance.** Supplier shall procure and maintain insurance as will protect it and the Purchaser from all claims, including personal injury and death, which may arise from its operations under the Purchase Order, and shall name Purchaser as an additional insured on such insurance. Supplier shall furnish to Purchaser insurance certificates prior to starting work.
13. **Warranty.** Supplier hereby warrants that all work will conform to the requirements of the Purchase Order and Client Contract, will be constructed in a



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good and workmanlike manner and consistent with approved submittals, and will be free of defects for one year following completion and acceptance of Supplier's work.

14. **Independent Contractor.** Supplier is an independent contractor and will not under any circumstances be considered or hold itself out to be an employee of Purchaser. Supplier shall enforce strict discipline and good order among its employees.

15. **Termination.** If Supplier is in material default of its obligations and fails to cure such default within 3 calendar days after receiving notice from Purchaser, Purchaser may terminate this Purchase Order in writing. Purchaser's termination right is without prejudice to any other right or remedy. Supplier will be liable for the damages sustained by Purchaser.

16. **Indemnity.** To the fullest extent permitted by law, Supplier shall indemnify, defend, and hold harmless the Purchaser and its agents, and employees from all claims and liabilities, including reasonable attorneys' fees, costs, and expenses incurred, arising from the Purchase Order, but only to the extent caused by the breach or negligence of the Supplier, or anyone contracted or employed directly or indirectly by the Supplier. This indemnity survives the expiration or earlier termination of this Purchase Order.

17. **Waiver of Consequential Damages.** Except as otherwise provided in this Paragraph, Purchaser and Supplier waive claims against each other for consequential damages arising out of or relating to the Purchase Order, including but not limited to loss of use, profit, income, rental expenses, financing, business and reputation. "**Consequential damages**" means those damages flowing indirectly from the breach or negligent act that were not foreseeable by the parties at the time they entered into this Purchase Order. This waiver of consequential damages has **no effect and does not apply or pertain to Consequential damages (i)** for which Purchaser is liable to its Client due to the acts or omissions of Supplier; **(ii)** as part of any claims by Purchaser for indemnity under the Purchase Order, or **(iii)** any claims that are covered by an applicable insurance policy.

18. **No Waiver.** Failure of either party to enforce any provision of this Purchase Order will not be deemed a waiver of that provision.

19. **Written Changes.** This Purchase Order may not be altered or amended, except in writing signed by both parties.

20. **Entire Agreement.** This Purchase Order constitutes the entire agreement of the parties and supersedes all prior negotiations, quotations, estimates, representations, or agreements between the parties, either written or oral. Supplier acknowledges that this Purchase Order has been mutually negotiated and neither party will be construed to be the drafter.

21. **Acceptance of Agreement.** Acceptance of this Purchase Order is limited to the terms and conditions stated herein, and any additional or different terms, conditions, estimates, quotations or instructions proposed by Supplier are rejected by the Purchaser and of no legal effect unless an amendment is signed in writing by both parties agreeing to such modifications. The terms of this Purchase Order take precedence over any other document or prior communications (oral or written) regarding this transaction. No course of conduct or dealings between the parties shall be construed to alter or modify these terms. The Supplier will be bound by this Purchase Order when it is executed or when it delivers to the Purchaser any of the labor, materials or equipment or renders for the Purchaser any of the incidental services ordered.

22. **No Assignment.** The Purchase Order, together with all rights and obligations thereunder, shall not be assigned (whether by operation of law otherwise) or contracted to third parties by Supplier without Purchaser's prior written consent. Any attempted assignment or subcontracting without Purchaser's written consent shall be void and shall constitute a material breach of this Purchase Order.

23. **Governing Law.** California law governs this Purchase Order.

24. **Dispute Resolution.**

(a) Any dispute between the parties arising from this agreement will be subject to good faith negotiations between executives.

(b) If the dispute remains unresolved after executive discussions, it will be mediated under the applicable rules of the American Arbitration Association or other third-party provider as the parties mutually agree.

(c) If the dispute remains unresolved following mediation, at the election of Purchaser in its sole and absolute discretion, Purchaser may require the dispute be submitted to binding arbitration in accordance with the applicable rules of the American Arbitration Association (or other third-party provider as the parties mutually agree). Judgment upon the award may be entered by any court having jurisdiction.

(d) **Venue for Mediation and Arbitration.** The location of the mediation and arbitration will be the county where the project is located or other location as the parties mutually agree.

(e) **Attorney Fees.** In any litigation or dispute resolution proceeding between the parties, each party shall bear their own costs and attorney's fees and no provision of this Purchase Order is intended as a provision to provide that either party will be entitled to recover attorney's fees as the prevailing party in any arbitration or litigation between Supplier and Purchaser.