

BACAR CONSTRUCTOR'S
INSTRUCTIONS, TERMS AND CONDITIONS
April 8, 2002

1. **ACCEPTANCE OF CONTRACT:** This Order expressly limits acceptance to the terms, conditions or instructions stated herein, and any additional of different terms, conditions or instructions proposed by Seller are hereby rejected unless expressly assented to in writing by Buyer's authorized agent. Buyer shall not be bound by this Order until Seller executes and delivers to Buyer the acknowledgement copy of this Order. Seller shall be bound by this Order and its terms and conditions when it executes and delivers the acknowledgement copy of when it delivers to Buyer any of the goods or renders for Buyer any of the services ordered herein. No contract shall exist except as hereinabove proved and no other form of acceptance is binding on Buyer.

2. **AMENDMENTS:** This Order contains the entire agreement of the parties. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. Any reference to Seller's quotation does not imply acceptance of any agreement or understanding, whether verbal or written, to modify this Order, or any instruction, term or condition herein, shall be binding upon Buyer unless in writing and signed by Buyer's authorized agent. No course of prior dealings, no usage of the trade and no course of performance shall be relevant to supplement or explain any term, condition, or instruction used in this Order or deemed to affect any modification.

3. **CHANGES:** Buyer reserves the right at any time to make changes in specifications, drawings and other data incorporated in this Order, methods of shipment or packing, place of delivery and time of delivery. Any difference in price resulting from such changes shall be equitably adjusted and this Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of this change. Price increases or extensions of time for delivery shall not be binding on Buyer unless evidenced by a Change Order issued and signed by Buyer's authorized agent.

4. **ASSIGNMENT:** No assignment of any right, obligation or interest in proceeds or any delegation of duty under this Order shall be made without the express written consent of Buyer's authorized agent and any attempted assignment or delegation without such consent shall be void.

5. **DRAWINGS & QUALITY:** Buyer shall receive from seller, for review and return for corrections or confirmation all samples/submittals/shop drawings as required in accordance with the contract documents or as necessary for the buyer to determine that the products or services provided by the seller adhere to the specifications of the project. The final corrected version of the samples/submittals/shop drawings produced by the seller and reviewed by the buyer are hereby incorporated into the Order and made a part hereof by reference. All goods or services furnished must conform to the drawings, specifications and other data incorporated herein and be of the quality specified, or in the event no quality is specified, must be of the highest quality regularly produced by Seller. Seller agrees that in the manufacture and production of the goods hereunder by Seller (or its Supplier) all applicable American Standards (such as ASA, ASME, ASTM and NEMA) in effect at the time of this Order have been complied with and followed. When goods purchased hereunder are to be manufactured or produced outside the United States or its territories, Seller shall furnish Buyer with the foreign manufacturers or producers name and address and written assurance that American Standards have been complied with and followed in manufacture or production.

6. **PRINTS:** When goods are made in accordance with drawings, specifications or other data furnished by Buyer, they shall not be used elsewhere without permission from Buyer. All shop drawings, patterns or tools made preparatory to production of any goods and charges for as such are to be considered Buyer's property and may be removed at Buyer's option.

7. **DELIVERY:** Supplier shall notify the jobsite a minimum of 48 hours prior to delivery. Failure to do so shall result in the refusal to accept shipment by the buyer. Any cost in the return and redelivery of the shipment will be born by the seller. Shipping instructions furnished by Buyer will be strictly complied with and shall be considered a part of this Order as if set out herein. Any provisions herein for delivery of goods by installments shall not be construed as making the obligations of Seller severable. Shipments sent C.O.D. without Buyer's written consent will not be accepted and will be at Seller's risk. Risk of loss and/or damage shall be upon Seller until the goods are physically delivered to Buyer's job site or other specified destinations, unless otherwise agreed to in writing and signed by Buyer's authorized agent. Packing slips must be signed by the individual listed on the ship to portion of the Purchase Order or the seller forfeits the right to payment for the goods delivered.

8. **CONTINGENCIES:** Failure of Buyer to take delivery of accept performance of services hereunder or portions thereof when due, if occasioned by Act of God or the public enemy, fire, explosion, perils of the sea, flood, drought, war, riot, sabotage, accident, embargo, government priority, requisition or allocation, or any circumstances of like character beyond the reasonable control of Buyer, or by interruption of or delay in transportation, labor trouble from whatever cause arising and whether or not the demands of the employees involved are reasonable and within Buyer's power to concede, partial or complete suspension of Buyer's operations, compliance with any Order or request of any governmental officer, department, agency or committee, shall not subject Buyer to any liability to Seller. At Buyer's option, the period specified for delivery of goods or performance of services hereunder shall be extended by the period of delay occasioned by any such circumstance and deliveries or services omitted (or portions thereof) shall be made or performed during such extension or the total ordered hereunder shall be reduced by the deliveries or services (or portions thereof) so omitted. The provisions of this section shall be effective notwithstanding that such circumstance shall have been operative at the date of this Order.

9. **QUANTITY:** The quantity of goods indicated on the face hereof must not be exceeded without authority in writing being first obtained from Buyer's count will be conclusive unless a packing list is enclosed.

10. **PACKING AND CARTAGE:** No charge will be allowed for packing, boxing or cartage, unless agreed upon at the time of purchase, but damage to goods not packed to insure proper protection to same will be charged to Seller. Complete packing list must accompany each shipment.

11. **MARKING:** Each package, invoice, bill of lading and shipping notice must be marked plainly with Purchase Order number.

12. **INSPECTION:** Except as otherwise provided in the Order, all shipments shall be subject to final inspection by Buyer after receipt by Buyer at destination. Buyer reserves the right to reject and refuse acceptance of goods or services which are not in accordance with specifications, drawings or other data or services which are not in accordance with specifications, drawings or other data or Seller's warranty (express or implied). Buyer will charge Seller for the cost of inspecting goods or service rejected. Goods not accepted will, at Buyer's option be (i) returned to Seller at Seller's expense; (ii) held by Buyer at Seller's expense; (iii) held by Buyer for an equitable reduction in price; (iv) repaired by Buyer at Seller's expense. Payment for any goods or service hereunder shall not be deemed an acceptance thereof. Buyer further reserves the right to inspect all goods or services during any stage of manufacture or production by Seller (or Seller's supplier), to audit QA/QC programs, and to otherwise assure quality control in the production and manufacture of the goods or service hereunder by Seller (or Seller's supplier) and Seller agrees to provide reasonable access, facilities, and assistance for the safe and convenient inspection and/or audit at Seller's plant (or its supplier's plant).

13. **CANCELLATION:** Buyer may, by written or telegraphic notice to Seller, cancel the whole or any part of this Order: (i) if Seller fails to deliver items and materials or perform the services required within the time provided under this Order or any mutually agreed upon extension of time; (ii) or, if Seller fails to perform any of the provisions of this Order or fails to make progress so as to endanger performance of this Order in accordance with its terms; (iii) or, if Seller becomes insolvent or makes an assignment for the benefit of creditors or commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings. In the event Buyer cancels this Order in whole or in part, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, items, materials and services similar to those so canceled, and Seller shall be liable to Buyer for any excess costs for such similar items, materials and services, including any damage resulting to Buyer as a consequence of Seller's default. In addition to the above rights, Buyer may at its option require Seller to deliver to Buyer any completed or uncompleted items or materials related to this Order. The rights and remedies of Buyer provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under

this Order.

14. **WARRANTY:** In addition to any warranty in fact or implied by law, Seller hereby expressly warrants that all goods or services covered by this Order, will conform to the drawings, specifications, data, samples or other description, furnished or incorporated as part of this Order and will be fit and sufficient for the purpose intended, merchantable of good material and guarantee the goods and service and to make good, at Seller's expense, any defect in materials or workmanship which may occur or develop. Seller agrees to indemnify, defend and hold harmless Buyer against any and all liabilities whatsoever for damages and/or injuries to persons or property which may be incurred by Buyer by virtue of defective materials or workmanship in the goods or services furnished hereunder, including all cost and reasonable attorneys' fees incurred. Seller agrees that these warranties shall survive inspection, acceptance and payment of said goods or services. These warranties shall run to the Buyer, its successors, assigns, customers and the users of its customer's products and Seller agrees to provide directly to the ultimate users written evidence of these warranties as required. In addition, Seller agrees to indemnify and reimburse Buyer for any cost incurred in enforcement of these warranties and any damage incurred by Buyer in connection with a breach of these warranties.

15. **INVOICES:** Prepare separate invoice in 5 copies for each Order, showing cash discount terms, point of shipment, transportation charges prepaid or collect, and country of manufacturer. Send invoice to address shown on face hereof. Include Purchase Order number on all invoices.

16. **DISCOUNT:** Discount date, or due date, will be calculated from the later of the date invoice is received by Buyer, or the goods are received, and are acceptable in accordance with Purchase Order terms, conditions and instructions.

17. **PRICE & PAYMENT:** Buyer shall not be billed at prices higher than stated on this Order unless authorized by a Change Order issued and signed by Buyer's authorized agent. Prices stated on this Order are firm, not subject to escalation and include all federal, state and local taxes, duties and import surcharges unless otherwise stated. Seller agrees that any price reduction made in the goods or services covered by this Order subsequent to the placements of this Order will be applicable to this Order. If price is not stated in this Order, Seller agrees to bill Buyer at the price last quoted, or at the prevailing market price, whichever is lower. Seller represents that the price charged is the lowest price charged by Seller to buyers of a class similar to Buyer under conditions similar to those specified in this Order and that prices comply with applicable government regulations in effect at time of quotation, sale or delivery. Payment will be made by Buyer upon receipt of Seller's invoice, but only after inspection and acceptance of the goods or services and receipt by Buyer or the executed acknowledgement copy of this Order, Seller shall furnish, if and when requested by Buyer, affidavits that all bills have been paid, such affidavit to be supported by receipted bills, if required by Buyer. Prior to payment Seller shall release Buyer of all liens and claims in a form suitable to Buyer.

18. **DRAFTS:** Drafts for purchased made will not be honored unless otherwise agreed by Buyer's authorized agent.

19. **TAXES:** In the event of the imposition of any tax on the goods or services herein furnished which must be borne by the Buyer, Seller agrees to remit to the Buyer any refund which Seller might receive by reason of the illegal collection of such tax.

20. **INSURANCES, SAFETY & CLAIMS:** In the event that Seller or his employees or agents are required to come onto a job site or project of Buyer in any connection with the sale of goods or the rendering of services under this Order. Seller agrees to carry Comprehensive General Liability and Automobile Liability insurance with limits covering bodily and property damage in the amount of \$1,000,000.00 per occurrence unless otherwise specified by buyer. Such insurance shall expressly cover the contractual liability of Seller under the third paragraph of this section. Seller further agrees to provide and maintain Workmen's Compensation Insurance in conformity with the laws of the state in which the sale of goods or the rendering of services is performed. Seller is required to submit written proof of such insurance to Buyer, on a form provided by Buyer, prior to entrance on the job site. Seller specifically agrees that in the sale of goods or rendering of services on a job site or project of Buyer that the Seller is an independent contractor and employing unit subject as an employer to all applicable unemployment compensation, occupational health and safety, or similar statutes. Seller further agrees to comply with all current safety requirements of federal, state and local laws and regulations and of the Buyer. For and in consideration of the covenants of the Buyer under this Order, including the agreement of the Buyer to pay to the Seller all amounts which may become due and payable in accordance with the terms of this Order, the Seller hereby assumes the risk of and covenants to indemnify the Buyer, the Owner, and the employees of each (hereinafter referred to as the "Indemnitee") against, and save them harmless from all losses, damages, liabilities, costs and expenses (including without limitation, reasonable attorney's fees) arising out of injury (including death) to any person or damage to any property resulting from or in any way connected with or arising out of the performance of this Order, regardless of whether or not such losses, damages, liabilities, costs or expenses shall be incident to or arise out of conditions or omissions permitted or acts performed by an Indemnitee, provided, however, that neither this paragraph nor any other provision of this Order shall be construed in any circumstances to constitute an indemnification contrary to any governing law which shall prohibit indemnification against any loss, damage, liability, cost or expense caused solely by the negligence of such Indemnitee. At the election of an Indemnitee, the Seller, at its own expense, also shall defend such Indemnitee against any claim, demand, action or suit for which indemnification is provided hereunder.

21. **PATENTS:** Seller undertakes and agrees to defend at Seller's expense, all suits, actions or proceedings in which Buyer, its successors, assigns, customers or the users of its customers products are made defendants for actual or alleged infringement of any I.S. or foreign letters patent resulting from the use or sale of the goods purchased hereunder and further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceedings against such defendants therein.

22. **COMPLIANCE WITH LAWS:** In the performance of this Order, Seller shall comply with all federal, state or local laws or regulations relating to nondiscrimination against any employee or applicant for employment because of race, religion, color, national origin, sex or ancestry with respect to hiring, promotion, demotion, transfer, recruitment, termination, rates of pay or other forms of compensation, and selection for training. Seller represents that the goods or services furnished hereunder have been produced or performed in compliance with the "Fair Labor Standards Act of 1938" as amended. In accepting this Order Seller further represents that all goods or services provided hereunder shall comply with all requirements of the Occupational Safety and Health Act of 1970, as may be amended from time to time and including all regulations adopted pursuant thereto, and all federal, state and local laws and regulations applicable to the goods or services provide hereunder from which liability may accrue to Buyer from any violation thereof.

23. **APPLICABLE LAW:** This Order and the interpretations hereof shall be governed by the laws of the actual place of performance and the Uniform Commercial Code as adopted in the said state.

24. **WAIVER:** Buyer's failure to insist on performance of any term, condition, or instruction or to exercise any right or privilege here include, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction and/or right or privilege.