

ADDENDUM NO. 3

ITB-CD-CME-16-17
BS-2 Surface Water Control Structure Rehabilitation

ISSUE DATE: **September 27, 2016**
DUE DATE: **October 27, 2016 @ 2:00pm**
SUBJECT: **Questions & Answers**

INTENT: This addendum is issued prior to the date bids are due in order to incorporate the following clarifications, additions, omissions, deletions, or changes into the Contract Documents.

Except as hereinafter specified, the work shall be in accordance with the drawings and specifications.

Bidders are to use the changed quantities of the items listed in this addendum in their proposals, and it shall become a part of the Contract Documents when construction is executed.

Bidders are reminded that this addendum must be noted on the "Official City Acknowledgment Form" when they submit their proposal. A signed copy of the addendum must also be included with the bid submittal.

1. **Please Note:** Attached is the allowance sheet, estimate sheet, pile quote, dredgesox quote, mission communication quote, and gate and riser quote.

Acknowledgment:

Signature and Date

Printed Name and Title

Company Name

END OF ADDENDUM NO. 3
*Fourteen pages to follow.

City of Palm Coast Project Manager

ALLOWANCES

The following Allowances **shall** be included in the Lump Sum Base Bid.

1.1 ALLOWANCES

- A. Allowances: Include in the Contract, a stipulated sum/price of the following amounts indicated for use upon the City's instruction.

SCADA Monitoring Computer/Workstation consisting of:

Item	QTY	CDW#	Unit Price	EXT. Price
Microsoft Surface Pro 4 Core i5 128 GB SSD 4 GB RAM Windows 10 Pro Mfg. Part#: 9PY-00001 UNSPSC: 43211509 MNWNC-119 43211500-WSCA-1 Contract: Microsoft Computer Equipment and Hardware Florida (MNWNC-119 43211500-WSCA-1)	1	3862820	\$949.05	\$949.05
Microsoft Surface Pro 4 Type Cover Keyboard Mfg. Part#: R9Q-00001 UNSPSC: 43211706 MNWNC-119 43211500-WSCA-1 Contract: Microsoft Computer Equipment and Hardware Florida (MNWNC-119 43211500-WSCA-1)	1	3862769	\$110.49	\$110.49
Microsoft Surface Pro 4 Docking Station Mfg. Part#: PF3-00005 UNSPSC: 43211602 MNWNC-119 43211500-WSCA-1 Contract: Microsoft Computer Equipment and Hardware Florida (MNWNC-119 43211500-WSCA-1)	1	3862762	\$169.99	\$169.99
UAG Surface Pro 4 Rugged case Mfg. Part#: UAG-SFPRO4-BLK-VP UNSPSC: 53121705 Contract: MARKET	1	3866218	\$59.50	\$59.50
Zagg InvisibleSHIELD GLASS Screen Protector for Microsoft Surface Pro 4 Mfg. Part#: MC4GLS-F00 UNSPSC: 56112005 Contract: MARKET	1	3907451	\$27.75	\$27.75
Microsoft Surface 65W Power Supply Power Adapter Mfg. Part#: Q5N-00001 UNSPSC: 39121006 Contract: Microsoft Computer Equipment and Hardware Florida (MNWNC-119 43211500-WSCA-1)	1	3862764	\$67.99	\$67.99
SUBTOTAL				\$1,384.77
SHIPPING				\$0.00
GRAND TOTAL				\$1,384.77

- B. This allowance will be drawn against the BS-2 Project Purchase Order as a direct purchase by the City's IT department. No action is required on behalf of the City by the Contractor.

NOTE: THE LUMP SUM BASE BID SHALL INCLUDE THIS ALLOWANCE

City of Palm Coast BS-2 Surface Water Control Structure

Cost Estimate

Item	Description	Price		QTY	Total
1	MOB/Clearing/Soil Tracking Device/Bond/Admin Costs	15000.00	LS		\$15,000.00
2	Canal Bank Clearing	1.00	SF	10000	\$10,000.00
3	Temporary Cofferdam/dewatering	500.00	LF	120	\$60,000.00
4	Demo Disposal Existing Weir/Soil Dam	600.00	LF	70	\$42,000.00
5	Engineering/Vinyl Sheet wall piles	400.00	LF	120	\$48,000.00
6	F.B Riser/Pipe/Gate (Installation)	45000.00	LS		\$45,000.00
7	F/R/S/P Concrete Collars & Cap	700.00	CY	90	\$63,000.00
8	Electrical work (including SCADA support)	10000.00	LS		\$10,000.00
9	SCADA Installation	12000.00	LS		\$12,000.00
10	Dredgesox Installation	82.00	LF	275	\$22,550.00
11	Concrete driveway, gate, RAP road (RAP Provided by City)	5000.00	LS		\$5,000.00
12	Dredge sox maintenance ramp 12' x 75'	2000.00	LS		\$2,000.00
13	Security Fencing and (2) 12 ft gates	2000.00	LS		\$2,000.00
14	Vegetative Restoration (Sod slopes, Dredgesox banks, Seed flat areas)	0.50	SF	10000	\$5,000.00
Project Total:					\$341,550.00

The pricing used in this cost estimate is based on the actual costs of similar, recently completed projects.

CONSTRUCTION OF THIS FACILITY MUST BE COMPLETED BY APRIL 1, 2017



Ft. Lauderdale
 3125 S Andrews Ave.
 Ft. Lauderdale, Florida 33316
 954-462-9099

Quotation

Quote No **4400**
Quote Date **08/31/2016**

Invoice Address
 City of Palm Coast
 160 Cypress Point Parkway
 Suite B-106
 Palm Coast, FL, 32164

Delivery Address
 City of Palm Coast
 160 Cypress Point Parkway
 Suite B-106
 Palm Coast, FL, 32164

Customer CITY05
Your Ref BS-2 water control structure
Taken By Doug Dykstra
Sales Rep Default

Contact Name
Contact Number
Contact Fax



Special Instructions	Notes

Line	Product Code	Description	Qty/Footage	Price	Per	Total
1	ESP10520	ESP 10.5 - 20' - Gray	85 Each	206.75	Each	17,573.75
2	zz_\$SOSyntheti cMisc_0026	Swellseal Hydrophilic sealant	12 Each	32.37	Each	388.44
3	Freight	Freight				240.00

This quote is good for _____ days

Total Amount	\$18,202.19
Sales Tax	\$1,167.54
Quotation Total	\$19,369.73

By your signature below, you are agreeing to the Terms and Conditions set forth on back or attached.

 Buyer Date

Subject to our terms and conditions of sale. Further copies available on request.



City of Palm Coast – BS-2

Custom Shoresox erosion repair proposal

September 22, 2016 • City of Palm Coast • Flagler County • Florida

Prepared for:

Capt. Mike Brennan, CGC, CFM
City of Palm Coast
160 Lake Avenue, Suite 203
Palm Coast, Florida 32164



Prepared by:

Brian Fischer
Lake and Wetland Management, Inc.
9218 87th Place South
Boynton Beach, Florida 33472-4302
(561) 735-3732 Office • (561) 735-0516 Fax
office@lakeandwetland.com • www.lakeandwetland.com



September 22, 2016

Capt. Mike Brennan, CGC, CFM / Stormwater Manager
City of Palm Coast
160 Lake Avenue, Suite 203
Palm Coast, Florida 32164

Dear Mr. Brennan,

We greatly appreciate the opportunity to bid on this project for you! Attached is the Agreement for the BS-2 Shoresox erosion repair project.

Lake and Wetland Management is a full-service environmental resource management team, offering a wide a variety of services, including;

- Lake management including algae, border grass and aquatic weed control,
- Mitigation wetland preserve management including invasive plant control,
- Power House fountain and aeration system sales and service,
- Shoresox earth-friendly erosion control system,
- Native plant installation through our locally-owned nursery,
- Environmental and wetland monitoring for agency compliance.

Our team leads the industry and has an exemplary reputation with many government agencies, builders, developers, property managers and homeowner associations. Our State-certified, trained biologists have been providing environmental services for many of Florida's waterways and natural areas since 1992.

Lake and Wetland Management is fully insured, carrying full coverage to protect our customers, including workman's compensation, liability and property damage.

We pride ourselves on providing the highest level of service in the industry and look forward to the opportunity of exceeding your expectations!

Respectfully yours,

LAKE AND WETLAND MANAGEMENT, INC.

Brian Fischer

Brian Fischer



EROSION CONTROL AGREEMENT

This agreement, dated September 22, 2016, is made between LAKE AND WETLAND MANAGEMENT, INC. (LWMI) and CUSTOMER:

Capt. Mike Brennan, CGC, CFM / Stormwater Manager
City of Palm Coast MBrennan@palmcoastgov.com
160 Lake Avenue, Suite 203 (386) 385-4707 Mobile
Boynton Beach, Florida 33435

Both **City of Palm Coast** and **Lake and Wetland Management, Inc.** agree to the following terms and conditions:

Description

Amount

BS-2 Project / Shoresox Erosion Repair / Bank Restoration services for 200' at the weir replacement location. Weir replacement service consists of two 75'x12' sections, and one 50'x6' section. Boat ramp area consists of one 75'x12' section laid flat with subsurface anchoring to secure the boat ramp, customer to determine location. City will provide a graded slope for all installation.

BS-2 Weir Replacement Area:

- Repair approximately 275 linear feet of lake bank at \$82.00 / per foot.
- City will have areas prepared for Shoresox.
- Materials consist of the following: Shoresox, wooden stakes, and rope.

Shoresox Investment: \$22,550.00

Service includes material, equipment, and labor to complete the project.

CUSTOMER is responsible for the cost of any necessary permits that may be required prior to commencement of work.

Sprinkler heads will be marked by the landscaper; otherwise LWM not be responsible for damage to them during the course of work. LWM will repair any exposed sprinkler heads damaged during erosion work in a timely manner.

A staging area for materials and equipment will be required. LWM will access the lake at designated areas and sod these areas to bring the property back to complete restoration. **(NOTE: CUSTOMER is responsible for maintenance of sod once installed)**

LWM is not responsible for damage to any underground irrigation, headwalls, piping, electrical, trees or any lines not noted on the as-builts or not located by Sunshine Locating Services (where digging is necessary).

The warranty/guarantee for Shoresox material is for a ten (10) year period. The labor warranty for any manual adjustments needed is for a one (1) year period. Our guarantee does not include the loss of material due to 'acts of God' such as floods, fire, hurricanes, or other catastrophic events, nor does it include losses due to theft, lack of adequate irrigation, vandalism or negligence by others, or other factors outside the control of our organization.

SCHEDULE OF PAYMENT:

- 50% Mobilization Deposit (\$11,275.00).
- 50% Upon Installation of Shoresox (\$11,275.00).

Conditions:

1. Ownership of property is implied by CUSTOMER with acceptance of this Agreement. In the event that CUSTOMER does not expressly own the areas where the above stated services are to be provided, CUSTOMER represents that express permission of the owner is given and that authorization to commence the above mentioned services is allowed. In the event of dispute of ownership, CUSTOMER agrees to hold harmless LWM for the consequences of such services.
2. LWM shall not be responsible for acts beyond its reasonable control, including adverse soil and / or water conditions, adverse weather conditions, unavailable materials, Acts of God, war, acts of vandalism, theft or third party actions. CUSTOMER further states that neither party shall be responsible in damages or penalties for any failure or delay in performance of any of its obligations caused by above named incidences.
3. Invoices submitted for work completed shall be paid within 30 days of receipt. A finance charge of 1.500% per month or an annual percentage rate of 18.000% will be computed on all past due balances.
4. Any incidental activity not explicitly mentioned in this proposal is excluded from the scope of work.
5. This proposal shall be valid for 30 days.
6. If LWM is required to enroll in any third-party compliance programs, invoicing or payment plans that asses fees in order to perform work for CUSTOMER, those charges will be invoiced back to CUSTOMER as invoiced to LWM.
7. LWM will maintain insurance coverage, which includes but is not limited to; General Liability Property Damage, Automobile Liability, and Workman's Compensation at its own expense.

8. No alterations or modifications, oral or written, of the terms contained above shall be valid unless made in writing, and wholly accepted by authorized representatives of both LWM and the CUSTOMER.

Customer acceptance – The above prices, specifications and conditions are hereby accepted.

Brian Fischer

Brian Fischer
Lake and Wetland Management, Inc.

Authorized signature Date
City of Palm Coast



<http://www.awc-inc.com>

207 Kelsey Lane
Tampa, FL 33619

Your AWC Contact: David Penatzer
Email: david.penatzer@awc-inc.com
Phone: (813) 386-1023 x2435

Confidential: To be used by recipient's organization only

Attn: Mike Brennan
Email: mbrennan@palmcoastgov.com



CITY OF PALM COAST
160 CYPRESS POINT PKWY

PALM COAST, FL 32164


Reference:	SURFACE WATER BS-2
AWC Quote #:	1264683
Quote Version:	001
Quote Date:	9/8/2016
Quote Expires:	12/16/2016
AWC Account #:	7C0715

[Set Up an Online Account](#)

[Check Current Availability](#)
[Request Expediting or Submit Feedback](#)

LI #	Qty	Part Number / Description	Your Price (Unit)	Your Price (Ext)	Need Date	Can Ship Today	Balance Ship Date
001	1	MC M802 RTU – Wireless Real-Time Alarm System with Streaming Data – NEMA 4X Enclosure (Outdoor enclosure; Includes all parts for standard installation)	\$2,095.0000	\$2,095.00		0	9/22/2016
							
002	2	MC SP800-12 Service Package - M800 Series - 1 year	\$563.4000	\$1,126.80		0	9/9/2016
003	1	MC OP460 Option Board - Analog Output and Pulse Input (2 analog output and 2 pulse input channels)	\$495.0000	\$495.00		0	9/22/2016
							
004	2	MC SPOP-12 Service Package - Expansion Board - 1 year (One per expansion board purchased)	\$60.0000	\$120.00		0	9/15/2016

Quotation

LI #	Qty	Part Number / Description	Your Price (Unit)	Your Price (Ext)	Need Date	Can Ship Today	Balance Ship Date	
005	1	MC PW862 Battery - 35 Amp-hour (Dimensions: 5" x 7.5" x 7", Weight: 25 lbs.)	\$132.0000	\$132.00		0	9/28/2016	
								
006	1	MI ENGINEERING SERVICES ENGINEERING SERVICES	\$1,000.0000	\$1,000.00		0	9/ 8/2016	
007	1	PL DB100300000000-NP dB10 with 30m cable	\$845.0000	\$845.00		0	9/29/2016	
008	1	PL 1701110000X4-XOP PULSAR ULTRA 3	\$1,800.0000	\$1,800.00		0	9/28/2016	
009	1	PL DBA0003 Hinged Bracket	\$255.0000	\$255.00		1		
010	1	ED AM24240RL 24" X 24" X 10 Fiberglass Enclosure	\$700.0000	\$700.00		0	9/15/2016	
011	1	MI PA2424 ALUM Back Panels AM/AM-R Ser JIC sz JB	\$72.9800	\$72.98		0	6/30/2015	
				*** SubTotal: ***				\$8,641.78

LI #	Qty	Part Number / Description	Your Price (Unit)	Your Price (Ext)	Need Date	Can Ship Today	Balance Ship Date
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Notes:

- 1.) All stock subject to prior sale. Orders submitted by 2:00pm (CST) generally ship the same business day. For urgent next day needs please contact us to ensure a timely shipment of your order.
- 2.) Balance Can Ship Dates are based upon receiving an order within one business day from the day of the quote. For updated Balance Ship Dates click on the link at the top of the quotation.
- 3.) Unless otherwise agreed to in writing by both parties all sales resulting from this quote are subject to AWC's "Standard Terms and Conditions of Sale".
(<http://www.awc-inc.com/AWCTermsAndConditions.pdf>)
- 4.) Standard shipment methods are UPS Ground or Southeastern Freight LTL.
- 5.) Standard freight payments are Prepay and Add.
- 6.) Standard payment terms are Net 30 days from date of invoice, subject to prior credit approval.
- 7.) The quoted sales price does not include taxes, freight, import/export duties or credit card processing fees.
- 8.) Credit card payments are acceptable if made at time of order placement, subject to a maximum of \$10,000. A credit card processing fee of up to 3% of the order amount may be added to the order total.

Quote # QUO-256243-D9S5Q7					
Date	8/12/2016	Account Name	City of Palm Coast	Reply-To	
Quote #	QUO-256243-D9S5Q7	Contact Name	City of Palm Coast	Contech Rep.	Rico Sadovnik
Revision #	1	Phone	(386) 986-4771	Address	9025 Centre Pointe Dr, Suite 400, West Chester, OH, 45069
Quote Name	BS-2	Fax		Phone	513-645-7311
		Email	JBostwick@palmcoastgov.com	Fax	
Project City/State	Palm Coast, FL			Email	RSadovnik@conteches.com

Contech's offer to sell the products described in this quotation is expressly conditioned upon Buyer's assent to the Contech Conditions of Sale ("Contech COS") included herewith and/or viewable at www.conteches.com/cos. A valid tax exemption certificate must be issued to Contech or sales tax will be added.

Item #	Description	Pieces	Quantity	Extended Unit Price	Unit	Unit Total
	CMP Flashboard Riser - Fitting Type : Flashboard Riser, Grade : CORLIX - Aluminum, Riser Diam : 72", Riser Height (Ft/In) : 9, Riser Gage : 10, Stub Diam : 48", Stub Length (Ft) : 2, Stub Gage : 12, Notes for Quote : 72" ALUM 10GA RISER W/48" ALUM 12GA X 2' STUB FLANGED W/BAFFLE W/40"X42" GH-60 ALUM WEIR GATE **PER DRAWINGS**	1.00	1.00	\$29,760.00	EA	\$29,760.00
	CORLIX PIPE 2 2/3x1/2 LS 12GA 48" - Length : 20, Notes for Quote : W/FLANGE ON ONE END ONLY	1.00	20.00	\$105.50	FT	\$2,110.00
	FIELD SERVICE RECOMMENDED	1.00	1.00	\$3,125.00	EA	\$3,125.00
					Total	\$34,995.00
					(Tax not included) Net Total	\$34,995.00

Standard Notes

1. A fuel surcharge will be added to the invoices for each shipment amounting to 0% of the freight amount and Buyer agrees to pay for these charges.
2. Allowable unloading time for delivery trucks is two (2) hours. Demurrage charges of \$75.00 per hour thereafter will be added.
3. Construction loadings typically exceed the intended post-construction live load used for design. Contact your Contech representative for specific guidelines and limitations based on the construction live loads anticipated.
4. Flexible structures of the type on this project are reliant on the type of structural backfill used, the compaction of that material and the balanced placement of structural backfill. Contact your Contech representative for specific information.
5. Prices are based on standardized loading to achieve full truckloads. If special loading requirements are needed additional freight charges will be added.
6. Quotation is based upon estimated (not guaranteed) quantities. Buyer must verify final quantities needed prior to commencement of work by Contech. If Buyer elects to purchase from Seller only a portion of the material quoted, Seller retains the right to adjust its prices.
7. The estimated manufacturing lead time for this material is x weeks from the receipt of approved submittal documents.
8. This quotation expires 30 days from the date shown. Prices are firm for shipment within 60 days of the date of quotation and are subject to a maximum escalation of 8% for each 30 days thereafter.

Scope Of Work

Hel-Cor Pipe

Corrugated Metal Pipe (Hel-Cor Pipe) will be provided in standard lengths. Special lengths may be provided at an additional charge and are subject to manufacturing tolerances and shipping limitations. Prices quoted are based on nesting diameters whenever possible. If un-nested loads are required additional freight charges will be added.

PAYMENT TERMS ARE 1/2%-10, NET 30 DAYS FROM DATE OF INVOICE UNLESS MATERIAL IS OTHERWISE NOTED AS NON-STANDARD ABOVE. IF NON-STANDARD, PAYMENT TERMS ARE 1/3 AT ORDER ACCEPTANCE AND PRIOR TO START OF PRODUCTION, 2/3 NET 30 DAYS FROM DATE OF INVOICE. THIS OFFER IS SUBJECT TO CREDIT APPROVAL. PRICES QUOTED APPLY ONLY TO THE REFERENCED PROJECT AND ARE IN EFFECT FOR 30 DAYS FROM THE DATE OF QUOTATION. SELLER RESERVES THE RIGHT TO ADJUST PRICES AFTER 30 DAYS FROM THE DATE OF QUOTATION BUT THE CONTECH COS REMAIN APPLICABLE. PRICES ARE BASED ON ESTIMATED QUANTITIES SHOWN. IF A DIFFERENT QUANTITY IS PURCHASED, CONTECH RESERVES THE RIGHT TO ADJUST THE PRICES. THIS QUOTATION CONTAINS THE ENTIRE AGREEMENT WITH RESPECT TO PURCHASE AND SALE OF PRODUCTS DESCRIBED AND SUPERSEDES ALL PREVIOUS COMMUNICATIONS. BUYER'S SIGNATURE BELOW, DIRECTION TO MANUFACTURE, OR ACCEPTANCE OF DELIVERY OF GOODS DESCRIBED ABOVE, SHALL BE DEEMED AN ACCEPTANCE OF THE CONTECH COS. SELLER EXPRESSLY REJECTS ANY OTHER TERMS AND CONDITIONS. PRICES ARE F.O.B. ORIGIN WITH FREIGHT ALLOWED TO THE JOBSITE WITH UNLOADING BY OTHERS AT A TRUCK ACCESSIBLE LOCATION. THIS QUOTATION IS ISSUED BY CONTECH ENGINEERED SOLUTIONS LLC FOR ITSELF AND/OR ON BEHALF OF ONE OR MORE OF ITS SUBSIDIARIES, INCLUDING BUT NOT LIMITED TO KEYSTONE RETAINING WALL SYSTEMS LLC.

<u>Acceptance</u>	<u>Contech Engineered Solutions LLC.</u>
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Quote # QUO-256243-D9S5Q7			
WE HEREBY ORDER THE DESCRIBED MATERIAL SUBJECT TO ALL TERMS AND CONDITIONS OF THIS QUOTATION AND IN THE Contech COS INCLUDED HEREWITH AND VIEWABLE AT www.conteches.com/cos		By	Rico Sadovnik
Company		(O)	513-645-7311
By		(F)	
Title		(Cell)	
Date		Title	

Quote # QUO-256243-D9S5Q7

Contech - CONDITIONS OF SALE

1. ACCEPTANCE. This quotation is an offer to sell to potential customer(s). BUYER'S RIGHT TO ACCEPT THIS OFFER IS LIMITED TO BUYER'S ASSENT TO THE TERMS AND CONDITIONS PRINTED HEREON AND THE ATTACHED OR ACCOMPANYING QUOTE, AND NO TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE IN THIS OFFER ARE BINDING ON SELLER. THERE ARE NO UNDERSTANDINGS, TERMS, CONDITIONS OR WARRANTIES NOT FULLY EXPRESSED HEREIN.

2. LIMITED WARRANTIES. Seller warrants that it can convey good title to the products sold under this contract and that they are free of liens and encumbrances. Seller also warrants that the products sold under this contract are substantially free from defects in material and workmanship for a period of one year after the date of delivery. There are no express or implied warranties with respect to products sold hereunder which are misused, abused or used in conjunction with mechanical equipment improperly designed, used or maintained, or which are used, supplied for use or made available for use in any nuclear application of which Seller has not been notified in writing by Buyer at the time of order for the products sold hereunder. SELLER MAKES NO OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ALL IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE ARE DISCLAIMED BY SELLER AND EXCLUDED FROM THIS CONTRACT.

3. LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY. Seller's liability hereunder shall be limited to the obligation to repair or replace only those products proven to have been defective in material or workmanship at the time of delivery, or allow credit, at its option. Seller's total cumulative liability in any way arising from or pertaining to any product or service sold or required to be sold under this contract shall NOT in any case exceed the purchase price paid by Buyer for such products or services. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, LOST PROFITS, CLAIMS FOR LABOR, OR CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY TYPE, WHETHER BUYER'S CLAIM BE BASED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES.

4. LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY FOR FAILURE OR DELAY IN DELIVERY. NO DELIVERY DATES ARE GUARANTEED. BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ONLY LIABILITY FOR ANY DELAY IN DELIVERY SHALL BE LIMITED AS SET FORTH IN PARAGRAPH 3 OF THIS CONTRACT.

5. FORCE MAJEURE. In any event and in addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance, which is (i) due to any act of God, the performance of any government order, any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law, local labor shortage, fire, flood or other casualty, governmental regulation or requirement, shortage or failure of raw material, supply, fuel, power or transportation, breakdown of equipment, or any cause beyond Seller's reasonable control whether of similar or dissimilar nature to those above enumerated, or (ii) due to any strike, labor dispute, or difference with workers, regardless of whether or not Seller is capable of settling any such labor problem.

6. BUYER'S OBLIGATION TO PASS ON LIMITATION OR WARRANTIES AND REMEDIES. In order to protect Seller against claims by Buyer's buyer, if Buyer resells any of the products purchased under this agreement, Buyer shall include the language contained in paragraphs 2 and 3 of this agreement, dealing with Seller's limitations of warranties and remedies, in an enforceable agreement with Buyer's buyer, or otherwise include language in an enforceable agreement with its buyer that makes Seller's limitation of warranties and remedies binding on its buyer. Buyer shall also include a provision in its agreement with its buyer applying Ohio law to any claims its buyer might assert against Seller with respect to products manufactured by Seller, and requiring its buyer to bring any such action against Seller either in federal district court in Cincinnati, Ohio or the common pleas court for Butler County, Ohio. Buyer shall defend, indemnify and hold Seller harmless from any and all claims, causes of action, damages, losses or expenses (including reasonable attorneys' fees) that Seller incurs by reason of Buyer's failure to comply with this paragraph.

7. PASSAGE OF TITLE. Title to the products sold hereunder shall pass upon delivery to the carrier at the point of shipment. Neither

Buyer nor the consignee shall have the right to divert or reassign such shipment to any destination other than specified in the bill of lading without permission of the Seller. Unless otherwise agreed Seller reserves the right to select the mode of transportation.

8. PAYMENTS AND LATE CHARGES ON PAST DUE ACCOUNTS. Buyer represents that Buyer is solvent and can and will pay for the products sold to Buyer in accordance with the terms hereof. If Buyer shall fail to comply with any provision or to make payments in accordance with the terms of this contract or any other contract between Buyer and Seller, Seller may at its option defer shipments or, without waiving any other rights it may have, terminate this contract. All deliveries shall be subject to the approval of Seller's Credit Department. Seller reserves the right, before making any delivery, to require payment in cash or security for payment, and if Buyer fails to comply with such requirement, Seller may terminate this contract. A late charge of 1-1/2% monthly (18% annual rate) or the maximum allowed by state law, if less, will be imposed on all past due accounts, and Buyer is responsible for all costs of collection including without limitation reasonable attorneys' fees and court costs.

9. TRANSPORTATION CHARGES. Delivered prices or prices involving competitive transportation adjustments shall be subject to appropriate adjustment to reflect changes in transportation charges.

10. CLAIMS BY BUYER. Buyer shall thoroughly inspect products sold under this contract immediately upon receipt to verify conformance with the specifications of the contract. Buyer must notify Seller of claims for failure or delay in delivery within 30 days after the scheduled delivery date. Buyer must notify Seller of any claims for nonconforming or defective products within 30 days after the nonconformity or defect was or should have been discovered. In addition, Seller must be given an opportunity to investigate the claim before Buyer disposes of the material, or else Buyer's claim will be barred. Seller shall incur no liability for damage, shortages, or other cause alleged to have occurred or existed at or prior to delivery to the carrier unless the Buyer shall have entered full details thereof on its receipt to the carrier.

11. MECHANICAL PROPERTIES; CHEMICAL ANALYSES. Data referring to mechanical properties or chemical analysis are the result of tests performed on specimens obtained from specific locations of the product(s) in accordance with prescribed sampling procedures; any warranty thereof is limited to the values obtained at such locations and by such procedures. There is no warranty with respect to values of the materials at other locations.

12. PATENTS. Seller shall indemnify Buyer against attorneys' fees and any damages or costs awarded against Buyer in the event any legal proceeding is brought against Buyer by a third person claiming the material delivered hereunder in itself constitutes an infringement of any U.S. patent, provided Buyer gives Seller prompt notice of any such suit being brought, gives Seller the opportunity to defend any such suit, and cooperates with Seller with respect to any such defense; unless the material is made in accordance with material designs, or specifications required by Buyer, in which case Buyer shall similarly indemnify Seller.

13. PERMISSIBLE VARIATIONS. The products sold hereunder shall be subject to Seller's standard manufacturing variations, tolerances and classifications.

14. TECHNICAL ADVICE. Buyer represents that it has made its own independent determination that the products it is purchasing under this contract meet the design requirements of Buyer's project and are suitable for Buyer's intended application. Buyer further represents that it has not relied in any respect on any written or oral statements or advice from Seller, other than the standard product specifications set forth in the most recent addition of Seller's published product brochures, in making that determination.

15. TAXES. No taxes imposed with respect of the sale of the products or services sold hereunder are included in any quotation by Seller. All applicable taxes shall be added and paid by Buyer in addition to the purchase price.

16. BUYER'S RIGHT OF TERMINATION. Buyer may terminate this contract in whole or in part upon notice in writing to Seller. Seller shall thereupon cease work and transfer to Buyer title to all completed and partially completed products and to any raw materials or supplies acquired by Seller especially for the purpose of performing this contract, and Buyer shall pay Seller the sum of the following:

- (1) the contract price for all products which have been completed prior to termination;
- (2) the cost to Seller of the material or work in process as shown on the books of Seller in accordance with the accounting practice

consistently maintained by Seller plus a reasonable profit thereon, but in no event more than the contract price; (3) the cost f o b. Seller's plant of materials and supplies acquired especially for the purpose of performing this contract; and (4) reasonable cancellation charges, if any, paid by Seller on account of any commitment(s) made hereunder.

17. SELLER'S RIGHT OF TERMINATION. In addition to the other rights of termination provided for in this contract, and if this contract is made pursuant to any governmental rule or regulation, plan, order or other directive, upon the directive, effected or impaired termination thereof, Seller shall have the option of canceling this contract in whole or in part.

18. WAIVER. Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.

19. DELIVERY. Unless otherwise agreed to in writing by the Seller, the Buyer hereby agrees to take delivery of the materials on this order within the later of thirty (30) days after the wanted date shown on the face of the order or within thirty (30) days after notification, oral or written, that the materials are ready for shipment. In the event that the Buyer does not arrange to take delivery of the materials in accordance with this Contract, Seller, at Seller's option, may:

- (a) invoice the Buyer for the materials less freight if applicable; store the material in Seller's yard for a period not to exceed sixty (60) days from the date of invoice; charge a storage fee not to exceed 5% per month or fraction thereof of the selling price of the stored materials; add any applicable price increases listed on the face of the order; charge for any repair work to protective coatings harmed by weathering while such material is being stored; and charge applicable freight when shipment to the Buyer is made. Materials remaining in storage after sixty (60) days from the invoice date shall become the property of the Buyer for disposition at the Seller's discretion. In that event, Buyer shall not be liable for the invoice price of the materials, but shall be liable for the storage fee and any repair work to protective coatings; or
- (b) cancel the order and invoice the Buyer for cancellation charges, which shall be 25% of the selling price of the materials if the materials are standard, in-stock material, or the full selling price if the materials are special or nonstandard in nature and were especially fabricated for the Buyer.

20. PERIOD OF LIMITATIONS. Buyer and Seller agree that any action by Buyer against Seller relating to this contract or the products sold hereunder, including, without limitation, any action for breach of contract or warranty, or otherwise in connection with the products sold under this contract, must be commenced by Buyer against Seller within one year after the cause of action therefore accrues or one year of delivery of the products sold hereunder, if less.

21. CONFLICTING PROVISIONS OFFERED BY BUYER. Any terms and conditions of any purchase order or other instrument issued by the Buyer, in connection with the subject matter of this document, which are in addition to or inconsistent with the terms and conditions expressed herein, will not be binding on Seller in any matter whatsoever unless accepted by Seller in writing.

22. SEVERABILITY. In case any provision of this contract shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

23. APPLICABLE LAW. This contract shall be governed by, and construed and enforced in accordance with, the laws of Ohio. Buyer and Seller specifically agree that any legal action brought relating to this contract shall be brought and tried exclusively in the federal district court in Cincinnati, Ohio, or, in the absence of jurisdiction, the Butler County Court of Common Pleas in Hamilton, Ohio.

REV. 03/15